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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1938

No. 591

BETHLEHEM STEEL COMPANY, PETITIONER,

vs.

ANGLO-CONTINENTALE TREUHAND, A. G., ET AL.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEW YORK

PETITION FOR CERTIORARI FILED JANUARY 13, 1939.

CERTIORARI GRANTED JANUARY 16, 1939.

SUPREME COURT OF THE UNITED STATES

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ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEW YORK

INDEX.

	Original	Print
Record on appeal to Court of Appeals of New York	1	1
Statement under Rule 234	1	1
Notice of appeal to Appellate Division	2	1
Judgment appealed from	4	2
Order appealed from	7	4
Notice of motion for judgment	10	6
Amended complaint	12	7
Exhibit "A"—Form of bond	40	27
Exhibit "B"—Forms of coupons	44	30
Amended answer	45	31
Affidavit of Arpad Plesch	61	41
Exhibits "A" to "L" (omitted in printing—see note)	83	
Exhibit "M-1"—Letter of January 11, 1934	84	57
Exhibit "M-2"—Letter of August 7, 1934	87	59
Exhibit "N"—Form of affidavit	90	60
Affidavit of George Le Blanc	91	61
Victor Osias	94	63
Charles J. McKenna	97	65
Edwin R. Williams	98	66
Cleveland Cobb	100	67
Harry Hoffman	101	68
Exhibit "A"—Cable from Arpad Plesch	102	69

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JANUARY 19, 1939.

	Original	Print
Record on appeal to Court of Appeals of New York—Continued.		
Affidavit of William J. Brown	104	7
Exhibit "A"—Letter, circular and form	113	7
Exhibit "B"—Circular	121	8
Exhibit "C"—Ownership certificate	126	8
Exhibit "D"—Ownership certificate	127	8
Affidavit of Donald E. Fobes	128	8
Opinion by Mr. Justice Hofstadter	129	8
Stipulation and order as to papers omitted in printing	130	8
Stipulation waiving certification	145	9
Notice of appeal to Court of Appeals by plaintiffs-appellants-respondents	147	9
Notice of appeal to Court of Appeals by defendant-respondent-appellant	150	10
Judgment of modification	153	10
Order of modification and affirmance as so modified—Appellate Division	156	10
Memorandum decision of the Appellate Division	158	10
Stipulation concerning any claim of disqualification of Mr. Justice Untermyer	159	10
Affidavit of no opinion in Appellate Division	160	10
Stipulation as to papers omitted in printing	161	10
Stipulation waiving certification	164	10
Opinion, per Curiam, Court of Appeals	165	10
Remittitur of Court of Appeals	166	10
Order on remittitur	169	11
Judgment on remittitur	174	11
Clerk's certificate (omitted in printing)	178	
Order allowing certiorari	179	11

[fol. 1]

IN SUPREME COURT OF NEW YORK, APPELLATE DIVISION, FIRST DEPARTMENT

ANGLO-CONTINENTALE TREUHAND, A. G., a Liechtenstein Corporation, N. V. Anglo-Continentale Trust Maatschappij (Anglo-Continental Trust Company), a Netherlands Corporation, Mondiale Handels-und Verwaltungs, A. G., a Liechtenstein Corporation, and Hydropress Handels, A. G., a Liechtenstein Corporation, Plaintiffs-Respondents,

against

BETHLEHEM STEEL COMPANY, Defendant-Appellant

STATEMENT UNDER RULE 234

This action was commenced October 8, 1936 by acceptance of service of a copy of summons and complaint. Issue was joined January 27, 1937 by the service of an amended answer to the amended complaint.

Plaintiffs-Respondents appeared by Harry Hoffman, Esq., as their attorney.

Defendant-Appellant appeared by Messrs. Cravath, deGersdorff, Swaine & Wood, as its attorneys.

There has been no change of parties or attorneys.

[fol. 2] IN SUPREME COURT OF NEW YORK, NEW YORK COUNTY

Index No. 32424—1936

ANGLO-CONTINENTALE TREUHAND, A. G., a Liechtenstein Corporation, N. V. Anglo-Continentale Trust Maatschappij (Anglo-Continental Trust Company), a Netherlands Corporation, Mondiale Handels-und Verwaltungs, A. G., a Liechtenstein Corporation, and Hydropress Handels, A. G., a Liechtenstein Corporation, Plaintiffs,

against

BETHLEHEM STEEL COMPANY, Defendant-Appellant

NOTICE OF APPEAL TO APPELLATE DIVISION

SIRS:

Please take notice that defendant hereby appeals to the Appellate Division of the Supreme Court, First Judicial

Department, from the judgment entered herein against defendant in the office of the Clerk of the County of New York on October 30, 1937, in favor of plaintiff Anglo-Continentale Treuhand, A. G. for the sum of $19,245.48, in favor of plaintiff Anglo-Continentale Trust Maatschappij (Anglo-Continental Trust Company) for the sum of $18,898.70, in favor of plaintiff Mondiale Handels-und Verwaltungs, A. G. [fol. 3] for the sum of $13,579.81, and in favor of plaintiff Hydropress Handels, A. G. for the sum of $465.85 and for costs in favor of said plaintiffs, and from the order upon which said judgment is based made herein by Mr. Justice Samuel H. Hofstadter on October 25, 1937, and entered in the office of said Clerk on October 26, 1937, which order struck out the amended answer of defendant and directed that judgment be entered in favor of the plaintiffs.

Dated November 26, 1937.

Yours, etc., Cravath, deGersdorff, Swaine & Wood, Attorneys for Defendant, No. 15 Broad Street, New York, N. Y.

To Clerk of the County of New York. Harry Hoffman, Esq., Attorney for Plaintiffs, No. 30 Pine Street, New York, N. Y.

[fol. 4] IN SUPREME COURT OF NEW YORK, COUNTY OF NEW YORK

Index No. 32424—1936

JUDGMENT APPEALED FROM

The plaintiffs herein having made a motion for an order striking out the answer of the defendant herein and directing that judgment be entered herein, in favor of the plaintiffs, under Rules 113 and 114 of the Rules of Civil Practice, on the ground that there is no defense to the action,

And said motion having duly come on to be heard at a Special Term, Part I, of this Court, held in and for the County of New York, at the County Courthouse in the Borough of Manhattan, City of New York, on the 10th day of September, 1937, and Harry Hoffman, attorney for the plaintiffs, having appeared in support of said motion, and Cravath, de Gersdorff, Swaine & Wood, attorneys for defendant (William D. Whitney, Esq., of counsel) having

appeared in opposition thereto, and the Court having duly made an order, dated October 25, 1937 and entered and filed in the office of the Clerk of the County of New York on October 26, 1937, granting said motion and directing that judgment be entered herein in favor of the plaintiff Anglo-Continentale Treuhand, A. G. in the sum of $17,721.39, with interest on $7,472.28 thereof from the 17th day of April, 1936, with interest on $9,795.55 thereof from the 2nd day of July, 1936, and with interest on $453.56 thereof from [fol. 5] the 20th day of July, 1936; and in favor of plaintiff Anglo-Continentale Trust Maatschappij (Anglo-Continental Trust Company) in the sum of $16,519.50, with interest on $421.23 thereof from the 26th day of February, 1935, with interest on $13,942.78 thereof from the 18th day of June, 1935, and with interest on $2,155.49 thereof from the 9th day of July, 1935; and in favor of plaintiff Mondiale Handels and Verwaltungs, A. G. in the sum of $12,265.08, with interest on $4,538.04 thereof from the 18th day of June, 1935, with interest on $2,731.23 thereof from the 1st day of April, 1936, and with interest on $4,995.81 thereof from the 9th day of July, 1936; and in favor of plaintiff Hydropress Handels, A. G. in the sum of $432.21, with interest thereon from the 20th day of July, 1936, together with the costs and disbursements of this action,

Now, on motion of Harry Hoffman, attorney for the plaintiffs, it is

Adjudged that the plaintiff Anglo-Continentale Treuhand, A. G. of Liechtenstein, Europe, do recover of the defendant Bethlehem Steel Company of 25 Broadway, N. Y. City, N. Y., the sum of $19,245.48, and that said plaintiff Anglo-Continentale Treuhand, A. G. have execution therefor; and it is

Further adjudged that the plaintiff Anglo-Continentale Trust Maatschappij (Anglo-Continental Trust Company) of Rotterdam, The Netherlands, Europe, do recover of the defendant Bethlehem Steel Company of 25 Broadway, N. Y. City, N. Y., the sum of $18,898.70, and that said plaintiff [fol. 6] Anglo-Continentale Trust Maatschappij (Anglo-Continental Trust Company) have execution therefor; and it is

Further adjudged that the plaintiff Mondiale Handels- und Verwaltungs, A. G. of Liechtenstein, Europe, do recover of the defendant Bethlehem Steel Company of 25

Broadway, N. Y. City, N. Y., the sum of $13,579.81, and that said plaintiff Mondiale Handels-und Verwaltungs, A. G. have execution therefor; and it is

Further adjudged that the plaintiff Hydropress Handels, A. G. of Liechtenstein, Europe, do recover of the defendant Bethlehem Steel Company of 25 Broadway, N. Y. City, N. Y., the sum of $465.85, and that said plaintiff Hydropress Handels, A. G. have execution therefor; and it is

Further adjudged that the plaintiffs, Anglo-Continentale Treuhand, A. G., Anglo-Continentale Trust Maatschappij (Anglo-Continental Trust Company), Mondiale Handels- und Verwaltungs, A. G. and Hydropress Handels, A. G., do recover of the defendant Bethlehem Steel Company the costs and disbursements herein, amounting to the sum of $32.65, and that said plaintiffs, Anglo-Continentale Treuhand, A. G., Anglo-Continentale Trust Maatschappij (Anglo-Continental Trust Company), Mondiale Handels- und Verwaltungs and Hydropress Handels, A. G., have execution therefor.

Dated October 30, 1937.

Albert Marinelli, Clerk. (Seal.)

[fol. 7] In Supreme Court of New York, County of New York

Order Appealed From—October 25, 1937

The plaintiffs in the above-entitled action having made a motion for an order awarding summary judgment in favor of the plaintiffs and against the defendant und[illegible] Rules 113 and 114 of the Rules of Civil Practice on th[illegible]round that there is no defense to the action, and for such other and further relief as to this Court might seem just and proper, and said motion having been duly referred by the Justice presiding at Special Term, Part III, of this Court, and having duly come on to be heard at this Special Term, Part I, of said Court on the 10th day of September, 1937.

And it appearing upon the hearing of this motion that since the motion was made the parties have entered into a certain stipulation and agreement dated July 30, 1937, filed herein, pursuant to which the plaintiffs have deposited their coupons (together with United States Treasury Department ownership certificates, Form 1001), with the Treasurer of

[fol. 8] Bethlehem Steel Corporation in New York, and which said stipulation provides, among other things, that the coupons shall be held in escrow in accordance with the provisions thereof and that the respective plaintiffs shall not be required hereafter to produce, present or surrender any of said coupons otherwise than in accordance with said stipulation and agreement,

Now, on reading and filing the amended complaint and the amended answer herein, the notice of motion dated May 17, 1937, the affidavit of Arpad Plesch, sworn to May 17, 1937, with all exhibits thereto annexed, the affidavit of Victor Osias, sworn to September 9, 1937, the affidavit of George L. LeBlanc, sworn to September 9, 1937, the affidavit of Charles J. McKenna, sworn to September 9, 1937, the affidavit of Edwin R. Williams, sworn to September 9, 1937, the affidavit of Cleveland Cobb, sworn to September 8, 1937, and the affidavit of Harry Hoffman, with exhibits thereto annexed, sworn to September 8, 1937, all in support of said motion; and on reading and filing the affidavit of William J. Brown, with all exhibits thereto annexed, sworn to May 22, 1937, and the affidavit of Donald E. Fobes, sworn to May 22, 1937, all in opposition to said motion; and on reading and filing the aforesaid stipulation and agreement dated July 30, 1937; and upon all the papers and proceedings heretofore had herein, and after hearing Harry Hoffman, Esq., attorney for the plaintiffs, in support of said motion, and William D. Whitney, Esq., of counsel for the defendant, in opposition thereto, and due deliberation having been had, and upon filing the opinion of the Court, it is, on motion of Harry Hoffman, attorney for the plaintiffs,

[fol. 9] Ordered that the said motion be and the same hereby is in all respects granted; and it is

Further ordered that the amended answer be and the same hereby is stricken out, and that judgment be entered herein as follows:

1. In favor of the plaintiff Anglo-Continentale Treuhand, A. G. in the sum of $17,721.39, with interest on $7,472.28 thereof from the 17th day of April, 1936, with interest on $9,795.55 thereof from the 2nd day of July, 1936, and with interest on $453.56 thereof from the 20th day of July, 1936;

2. In favor of plaintiff Anglo-Continentale Trust Maatschappij (Anglo-Continental Trust Company) in the sum of $16,519.50, with interest on $421.23 thereof from the 26th

day of February, 1935, with interest on $13,942.78 thereof from the 18th day of June, 1935, and with interest on $2,155.49 thereof from the 9th day of July, 1935;

3. In favor of plaintiff Mondiale Handelsund Verwaltungs, A. G. in the sum of $12,265.08, with interest on $4,538.04 thereof from the 18th day of June, 1935, with interest on $2,731.23 thereof from the 1st day of April, 1936, and with interest on $4,995.81 thereof from the 9th day of July, 1936;

4. In favor of plaintiff Hydropress Handels, A. G. in the sum of $432.21, with interest thereon from the 20th day of July, 1936.

together with costs and disbursements of the action, and it is [fol. 10] Further ordered that, pursuant to Section 614 of the Civil Practice Act, execution on the judgment to be entered herein be, and hereby is, stayed for thirty days after the service upon the attorneys for the defendant of a copy of such judgment and notice of the entry thereof.

Enter.

S. H. H., J. S. C.

In Supreme Court of New York, County of New York

Index No. 32424—1936

Notice of Motion for Judgment

Sirs:

Please take notice, that upon the amended complaint and amended answer herein, and upon the affidavit of Arpad Plesch, sworn to the 17th day of May, 1937, the plaintiffs will move this Court, at a Special Term, Part III thereof, to be held in and for the County of New York, at the County Court House in the Borough of Manhattan, City, County [fol. 11] and State of New York, on the 27th day of May, 1937, at 10 o'clock in the forenoon or as soon thereafter as counsel can be heard, for an order awarding summary judgment in favor of the plaintiffs and against the defendant, pursuant to Rule 113 of the Rules of Civil Practice, and, pending the determination of said motion, partial judgment for the sum admitted by defendant to be due and owing, and for such other and further relief as to the Court may

seem just and proper, and for the costs and disbursements of this action.

Answering affidavits must be served five days before the return day of the motion.

Dated, New York, N. Y., May 17, 1937.

Harry Hoffman, Attorney for Plaintiffs, 30 Pine Street, Borough of Manhattan, New York City.

To Messrs. Cravath, deGersdorff, Swaine & Wood, Attorneys for Defendant, 15 Broad Street, New York City.

[fol. 12] In Supreme Court of New York, County of New York

Amended Complaint

Plaintiffs above named, by Harry Hoffman, their attorney, complain of the defendant and allege:

For a first cause of action, plaintiff, Anglo-Continentale Treuhand, A. G., alleges:

1. Plaintiff, Anglo-Continentale Treuhand, A. G. (hereinafter called "Treuhand") at all times hereinafter mentioned was and now is a corporation duly organized and existing under the laws of the Principality of Liechtenstein, in Europe.

2. Defendant, Bethlehem Steel Company, at all times hereinafter mentioned was and now is a corporation organized and existing under the laws of the State of Pennsylvania, and maintains an office and place of business at 25 Broadway, in the Borough of Manhattan, City and State of New York, and is duly authorized to do business in the State of New York, and has duly designated a person in the State of New York upon whom process may be served.

3. On or about the 1st day of May, 1912, defendant duly made, and for value received, issued and delivered its First Lien and Refunding Mortgage 5% Thirty-Year Gold Bonds (hereinafter called "Bonds") dated May 1, 1912, and due [fol. 13] May 1, 1942, to which certain coupons were attached. Copies of the form of said Bonds and of the form of said coupons are annexed hereto, marked Exhibit "A" and Exhibits "B" and "B-2" respectively and made a part hereof as if fully set forth herein.

4. By said Bonds and by said coupons in the form of Exhibit "B-1", defendant promised to pay to bearer on May 1935, at its office or agency in the Borough of Manhattan, in the City of New York, Twenty-Five ($25.) Dollars in United States gold coin; or, at the option of the holder, at designated offices in the following cities and countries respectively, at which said interest is expressed to be payable, in London, England, Five Pounds, Two Shillings, Ten Pence (£5. 2s. 10d.), or in Amsterdam, Holland, Sixty-Two Guilders Twenty-Five cents (62.25), being six month's interes' then due on its said Bonds.

5. Plaintiff Treuhand is the legal owner, holder and bearer of five (5) of said coupons due and payable on May 1, 1935.

6. After said due date plaintiff Treuhand, by its duly authorized agent, duly presented each of said coupons at the office or agency of defendant in Amsterdam, Holland, and duly demanded with respect to each of said coupons payment of sixty-two guilders twenty-five cents (62.25), or three hundred eleven guilders twenty-five cents (311.25), which defendant had agreed to pay, but defendant failed, neglected and refused to pay said coupons in accordance with the tenor thereof.

7. On or about May 1, 1935, when said coupons became due as aforesaid, the market value in lawful money of the United States of three hundred eleven guilders twenty-five [fol. 14] cents (311.25) was $211.08, said guilders being on that day of the market value of 67.8164 cents per guilder, or $42.22 per coupon.

8. There is now due and owing by defendant to plaintiff Treuhand the sum of $211.08, the market value in lawful money of the United States of three hundred eleven guilders twenty-five cents (311.25) as aforesaid, no part of which sum has been paid, although payment was duly demanded.

For a second cause of action, plaintiff Anglo-Continentale Treuhand, A. G., alleges:

9. Repeats and re-alleges paragraphs numbered 1, 2 and 3 of this complaint, as if fully set forth herein.

10. By said Bonds and by said coupons in the form of Exhibit B-1, defendant promised to pay to bearer on No-

vember 1, 1935, at its office or agency in the Borough of Manhattan, in the City of New York, Twenty-five ($25.) Dollars in United States gold coin; or, at the option of the holder, at designated offices in the following cities and countries respectively, at which said interest is expressed to be payable: in London, England, Five Pounds, Two Shillings, Ten Pence (£5. 2s. 10d.), or in Amsterdam, Holland, Sixty-two Guilders Twenty-five Cents (62.25), being six months' interest then due on its said Bonds.

11. Plaintiff, Treuhand, is the legal owner, holder and bearer of one hundred and ninety-seven (197) of said coupons due and payable on November 1, 1935.

12. After said due date, plaintiff Treuhand, by its duly authorized agent, duly presented each of said coupons at the [fol. 15] office or agency of defendant in Amsterdam, Holland, and duly demanded with respect to each of said coupons payment of Sixty-two guilders Twenty-five Cents (62.25) or Twelve Thousand Two Hundred Sixty-three Guilders Twenty-five Cents (12,263.25) which defendant had agreed to pay, but defendant failed, neglected and refused to pay said coupons in accordance with the tenor thereof.

13. On or about November 1, 1935, when said coupons became due as aforesaid, the market value in lawful money of the United States of Twelve Thousand Two Hundred Sixty-three Guilders Twenty-five Cents (12,263.25) was $8,339.01, said guilders being on that day of the market value of 68 cents per guilder or $42.33 per coupon.

14. There is now due and owing by defendant to plaintiff Treuhand the sum of $8,339.01, the market value in lawful money of the United States of 12,263.25 guilders, being damages suffered by said plaintiff Treuhand by reason of the breach by defendant of its obligations to pay said 12,263.25 guilders as aforesaid, no part of which sum has been paid, although payment was duly demanded.

For a third cause of action, plaintiff, Anglo-Continentale Treuhand, A. G., alleges:

15. Repeats and re-alleges paragraphs numbered 1, 2 and 3 of this complaint, as if fully set forth herein.

16. By said Bonds and by said coupons, in the form of Exhibit B-2, defendant promised to pay to bearer on No-

vember 1, 1935, at its office or agency in the Borough of [fol. 16] Manhattan, in the City of New York, Twelve Dollars and Fifty Cents ($12.50) in United States gold coin; or, at the option of the holder, at designated offices in the following cities and countries respectively, at which said interest is expressed to be payable: in London, England, Two Pounds, Eleven Shillings, Five Pence (£2. 11s. 5d.), or in Amsterdam, Holland Thirty-one Guilders Thirteen Cents (31.13), being six month's interest then due on its said Bonds.

17. Plaintiff, Treuhand, is the legal owner, holder and bearer of thirty (30) of said coupons due and payable on November 1, 1935.

18. After said due date, plaintiff, Treuhand, by its duly authorized agent, presented each of said coupons at the office or agency of defendant in Amsterdam, Holland, and duly demanded with respect to each of said coupons payment of Thirty-one Guilders Thirteen Cents (31.13), or Nine Hundred Thirty-three guilders Ninety Cents (933.90) which defendant had agreed to pay, but defendant failed, neglected and refused to pay said coupons in accordance with the tenor thereof.

19. On or about November 1, 1935, when said coupons became due as aforesaid, the market value in lawful money of the United States of Nine Hundred Thirty-three Guilders Ninety Cents (933.90) was $635.05, said guilder being on that day of the market value of 68 cents per guilder or $21.17 per coupon.

20. There is now due and owing by defendant to plaintiff, Treuhand, the sum of $635.05, the market value in lawful money of the United States of 933.90 guilders, being dam- [fol. 17] ages suffered by plaintiff, Treuhand, by reason of the breach by defendant of its obligations to pay said 933.90 guilders as aforesaid, no part of which sum has been paid, although payment was duly demanded.

For a fourth cause of action, plaintiff, Anglo-Continentale Treuhand, A. G., alleges:

21. Repeats and re-alleges paragraphs numbered 1, 2 and 3 of this complaint, as if fully set forth herein.

22. By said Bonds and by said coupons in the form of Exhibit B-1, defendant promised to pay to bearer on May 1, 1936, at its office or agency in the Borough of Manhattan, in the City of New York, Twenty-Five ($25) Dollars, in United States gold coin; or, at the option of the holder, at designated offices in the following cities and countries respectively, at which said interest is expressed to be payable: in London, England, Five Pounds, Two Shillings, Ten Pence (£5. 2s. 10d.), or in Amsterdam, Holland, Sixty-two Guilders Twenty-five Cents (62.25), being six months' interest then due on its said Bonds.

23. Plaintiff, Treuhand, is the legal owner, holder and bearer of two hundred and nine (209) of said coupons due and payable on May 1, 1936.

24. After said due date, plaintiff, Treuhand, by its duly authorized agent, presented each of said coupons at the office or agency of defendant in Amsterdam, Holland, and duly demanded with respect to each of said coupons payment of Sixty-two Guilders Twenty-five Cents (62.25), or Thirteen Thousand and Ten Guilders Twenty-five Cents [fol. 18] (13,010.25) which defendant had agreed to pay, but defendant failed, neglected and refused to pay said coupons in accordance with the tenor thereof.

25. On or about May 1, 1936, when said coupons became due as aforesaid, the market value in lawful money of the United States of Thirteen Thousand and Ten Guilders Twenty-five Cents (13,010.25) was $8,846.97, said guilder being on that day of the market value of 68 cents per guilder or $42.33 per coupon.

26. There is now due and owing by defendant to plaintiff, Treuhand, the sum of $8,846.97, the market value in lawful money of the United States of 13,010.25 Guilders, being damages suffered by plaintiff, Treuhand, by reason of the breach by defendant of its obligations to pay said 13,010.25 Guilders as aforesaid, no part of which sum has been paid, although payment was duly demanded.

For a fifth cause of action, plaintiff, Anglo-Continentale Treuhand, A. G., alleges:

27. Repeats and re-alleges paragraphs numbered 1, 2 and 3 of this complaint, as if fully set forth herein.

28. By said Bonds and by said coupons in the form of Exhibit B-2, defendant promised to pay to bearer on May 1, 1936, at its office or agency in the Borough of Manhattan, in the City of New York, Twelve Dollars and Fifty Cents ($12.50) in United States gold coin; or, at the option of the holder, at designated offices in the following cities and countries respectively, at which said interest is expressed to be payable: in London, England, Two Pounds, Eleven [fol. 19] Shillings, Five Pence (£2, 11s. 5d.), or in Amsterdam, Holland, Thirty-one Guilders Thirteen Cents (31.13), being six months' interest then due on its said Bonds.

29. Plaintiff, Treuhand, is the legal owner, holder and bearer of forty-six (46) of said coupons due and payable on May 1, 1936.

30. After said due date, plaintiff, Treuhand, by its duly authorized agent, presented each of said coupons and duly demanded with respect to each of said coupons payment of Thirty-one Guilders Thirteen Cents (31.13), or Fourteen Hundred Thirty-three Guilders Ninety-eight Cents (1,433.98) which defendant had agreed to pay, but defendant failed, neglected and refused to pay said coupons in accordance with the tenor thereof.

31. On or about May 1, 1936, when said coupons became due as aforesaid, the market value in lawful money of the United States of Fourteen Hundred Thirty-three Guilders Ninety-eight Cents (1,433.98) was $975.11, said guilders on that day being of the market value of 68 cents per guilder or $21.17 per coupon.

32. There is now due and owing by defendant to plaintiff, Treuhand, the sum of $975.11, the market value in lawful money of the United States of 1,433.98 guilders, being damages suffered by plaintiff, Treuhand, by reason of the breach by defendant of its obligation to pay said 1,433.98 guilders as aforesaid, no part of which sum has been paid, although payment was duly demanded.

[fol. 20] For a sixth cause of action, plaintiff, Anglo-Continentale Treuhand, A. G., alleges:

33. Repeats and re-alleges paragraphs numbered 1 to 32 inclusive of this complaint, as if fully set forth herein.

34. By reason of defendant's failure and refusal to pay said coupons as aforesaid, plaintiff, Treuhand, incurred

and paid protest fees and expenses of Eleven Guilders Ninety-five Cents (11.95) on or about April 17, 1936, Twenty-three Guilders Fifteen Cents (23.15) on or about July 2, 1936 and Eleven Guilders Twenty Cents (11.20) on or about July 20, 1936.

35. The market value of guilders in lawful money of the United States was on or about said dates, as follows:

April 17, 1936 ..... 68 cents per guilder;
July 2, 1936 ..... 68 cents per guilder;
July 20, 1936 ..... 68 cents per guilder.

36. There is now due and owing by the defendant to the plaintiff, Treuhand, the sum of $31.48, the market value in lawful money of the United States of Forty-six Guilders Thirty Cents (46.30), being damages suffered by plaintiff, Treuhand, by reason of the breach by defendant of its obligation to pay said 46.30 guilders as aforesaid, no part of which sum has been paid, although payment was duly demanded.

For a seventh cause of action, plaintiff, N. V. Anglo-Continentale Trust Maatschappij (Anglo-Continental Trust Company) alleges:

37. Plaintiff, N. V. Anglo-Continentale Trust Maatschappij (Anglo-Continental Trust Company) [hereinafter called [fol. 21] "Maatschappij"] at all times hereinafter mentioned was and now is a corporation duly organized and existing under the laws of the Netherlands.

38. Plaintiff, Maatschappij, repeats and realleges paragraphs numbered 2 and 3 of this complaint, as if fully set forth herein.

39. By said Bonds and by said coupons in the form of Exhibit B-1, defendant promised to pay to bearer on November 1, 1934, at its office or agency in the Borough of Manhattan, in the City of New York, Twenty-five ($25) Dollars in United States gold coin; or, at the option of the holder, at designated offices in the following cities and countries respectively, at which interest is expressed to be payable: In London, England, Five Pounds, Two Shillings, Ten Pence (£5, 2s. 10d.), or in Amsterdam, Holland, Sixty-two Guilders Twenty-five Cents (62.25), being six months' interest then due on its said Bonds.

40. Plaintiff, Maatschappij, is the legal owner, holder and bearer of one hundred and fifty-one (151) of said coupons due and payable on November 1, 1934.

41. After said due date, plaintiff, Maatschappij, by its duly authorized agent, duly presented each of said coupons at the office or agency of defendant in Amsterdam, Holland, and duly demanded with respect to each of said coupons payment of Sixty-two Guilders Twenty-five cents (62.25), or Nine Thousand Three Hundred Ninety-nine Guilders Seventy-five Cents (9,399.75), which defendant had agreed to pay, but defendant failed, neglected and refused [fol. 22] to pay said coupons in accordance with the tenor thereof.

42. On or about November 1, 1934, when said coupons became due as aforesaid, the market value in lawful money of the United States of Nine Thousand Three Hundred Ninety-nine Guilders Seventy-five Cents (9,399.75) was $6,360.52, said guilders being on that day of the market value of 67.6669 cents per guilder or $42.12 per coupon.

43. There is now due and owing by defendant to plaintiff, Maatschappij, the sum of $6,360.52, the market value in lawful money of the United States of 9,399.75 guilders, being damages suffered by plaintiff, Maatschappij, by reason of the breach by defendant of its obligation to pay said 9,399.75 guilders as aforesaid, no part of which sum has been paid, although payment was duly demanded.

For an eighth cause of action, plaintiff, N. V. Anglo-Continentale Trust Maatschappij (Anglo-Continental Trust Company) alleges:

44. Repeats and re-alleges paragraphs numbered 2, 3, 37 and 38 of this complaint, as if fully set forth herein.

45. By said Bonds and by said coupons, in the form of Exhibit B-2, defendant promised to pay to bearer on November 1, 1934, at its office or agency in the Borough of Manhattan, in the City of New York Twelve Dollars and Fifty Cents ($12.50) in United States gold coin; or, at the option of the holder, at designated offices in the following cities and countries respectively, at which said interest is expressed to be payable: in London, England, Two [fol. 23] Pounds, Eleven Shillings, Five Pence (£2. 11s. 5d.),

or in Amsterdam, Holland, Thirty-one Guilders Thirteen Cents (31.13), being six months' interest then due on its said Bonds.

46. Plaintiff, Maatschappij, is the legal owner, holder and bearer of twenty-six (26) of said coupons due and payable on November 1, 1934.

47. After said due date, plaintiff, Maatschappij, by its duly authorized agent, presented each of said coupons at the office or agency of defendant in Amsterdam, Holland, and duly demanded with respect to each of said coupons payment of Thirty-one Guilders Thirteen Cents (31.13), or Eight Hundred Nine Guilders Thirty-eight Cents (809.38) which defendant had agreed to pay, but defendant failed, neglected and refused to pay said coupons in accordance with the tenor thereof.

48. On or about November 1, 1934, when said coupons became due as aforesaid, the market value in lawful money of the United States of Eight Hundred Nine Guilders Thirty-eight Cents (809.38) was $547.68, said guilders being on that day of the market value of 67.6669 cents per guilder or $21.06 per coupon.

49. There is now due and owing by defendant to plaintiff, Maatschappij, the sum of $547.68, the market value in lawful money of the United States of 809.38 guilders, being damages suffered by plaintiff, Maatschappij, by reason of the breach by defendant of its obligation to pay said 909.38 guilders as aforesaid, no part of which sum has been paid, although payment was duly demanded.

[fol. 24] For a ninth cause of action, plaintiff, N. V. Anglo-Continentale Trust Maatschappij (Anglo-Continental Trust Company) alleges:

50. Repeats and re-alleges paragraphs numbered 2, 3, 4 and 37 of this complaint, as if fully set forth herein.

51. Plaintiff, Maatschappij, is the legal owner, holder and bearer of two hundred and twelve (212) of said coupons due and payable on May 1, 1935.

52. After said due date, plaintiff, Maatschappij, by its duly authorized agent, presented each of said coupons at the office or agency of defendant in Amsterdam, Holland, and duly demanded with respect to each of said coupons

payment of Sixty-two Guilders Twenty-five Cents (62.25) or Thirteen Thousand One Hundred Ninety-Seven Guilders (13,197) which defendant had agreed to pay, but defendant failed, neglected and refused to pay said coupons in accordance with the tenor thereof.

53. On or about May 1, 1935, when said coupons became due as aforesaid, the market value in lawful money of the United States of Thirteen Thousand One Hundred Ninety-seven Guilders was $8,949.71, said guilders being on that day of the market value of 67.8164 cents per guilder, or $42.22 per coupon.

54. There is now due and owing by defendant to plaintiff, Treuhand, the sum of $8,949.71, the market value in lawful money of the United States of 13,197 guilders, being damages suffered by plaintiff, Maatschappij, by reason of breach by defendant of its obligation to pay said 13,197 guilders as aforesaid, no part of which sum has been paid, although payment was duly demanded.

[fol. 25] For a tenth cause of action, plaintiff, N. V. Anglo-Continentale Trust Maatschappij (Anglo-Continental Trust Company) alleges:

55. Repeats and re-alleges paragraphs numbered 2, 3 and 37 of this complaint, as if fully set forth herein.

56. By said Bonds and by said coupons in the form of Exhibit B-2, defendant promised to pay to bearer on May 1, 1935, at its office or agency in the Borough of Manhattan, in the City of New York, Twelve Dollars and Fifty Cents ($12.50) in United States gold coin; or, at the option of the holder, at designated offices in the following cities and countries respectively, at which said interest is expressed to be payable: in London, England, Two Pounds, Eleven Shillings, Five Pence (£2. 11s. 5d.), or in Amsterdam, Holland, Thirty-one Guilders Thirteen Cents (31.13) being six months' interest then due on its said Bonds.

57. Plaintiff, Maatschappij, is the legal owner, holder and bearer of thirty (30) of said coupons due and payable on May 1, 1935.

58. After said due date, plaintiff, Maatschappij, by its duly authorized agent, presented each of said coupons at the office or agency of defendant in Amsterdam, Holland,

and duly demanded with respect to each of said coupons payment of Thirty-one Guilders Thirteen Cents (31.13), or Nine Hundred and Thirty-three Guilders Ninety Cents (933.90) which defendant had agreed to pay, but defendant failed, neglected and refused to pay said coupons in accordance with the tenor thereof.

59. On or about May 1, 1935, when said coupons became due as aforesaid, the market value in lawful money of the [fol. 26] United States of Nine Hundred Thirty-three Guilders Ninety Cents (933.90) was about $633.23, said guilders on that day being of the market value of 67.8164 cents per guilder or $21.11 per coupon.

60. There is now due and owing by defendant to Plaintiff, Maatschappij, the sum of $633.23, the market value in lawful money of the United States of 933.90 guilders, being damages suffered by plaintiff, Maatschappij, by reason of the breach by defendant of its obligation to pay said 933.90 guilders as aforesaid, no part of which sum has been paid, although payment was duly demanded.

For an eleventh cause of action, Plaintiff, Continentale Trust Maatschappij (Anglo-Continental Trust Company) alleges:

61. Repeats and re-alleges paragraphs numbered 55 to 60 both inclusive of this complaint as if fully set forth herein.

62. By reason of defendant's failure and refusal to pay said coupons as aforesaid, plaintiff, Maatschappij, incurred and paid protest fees and expenses of Nine Guilders Fifteen Cents (9.15) on or about February 26, 1935, Thirty-five Guilders Forty Cents (35.40) on or about June 19, 1935, and Twenty-eight Guilders Forty Cents (28.40) on or about July 9, 1935.

63. The market value of guilders in lawful money of the United States was on or about said dates, as follows:

February 26, 1935	68 cents per guilder.
June 19, 1935	68 cents per guilder.
July 9, 1935	68 cents per guilder.

[fol. 27] 64. There is now due and owing by the defendant to the plaintiff, Maatschappij, the sum of $496.06, the market value in lawful money of the United States of 72.95 guilders,

being damages suffered by plaintiff, Maatschappij, by reason of the breach by defendant of its obligation to pay said 72.95 guilders as aforesaid, no part of which has been paid, although payment was duly demanded.

For a twelfth cause of action, plaintiff, Mondiale Handels-und Verwaltungs, A. G., alleges:

65. Plaintiff, Mondiale Handels-und Verwaltungs, A. G. (hereinafter called "Mondiale") at all times hereinafter mentioned was and now is a corporation organized and existing under the laws of the Principality of Liechtenstein, in Europe.

66. Plaintiff, Mondiale, repeats and re-alleges paragraphs numbered 2, 3 and 39 of this complaint as if fully set forth herein.

67. Plaintiff, Mondiale, is the legal owner, holder and bearer of thirty-seven (37) of said coupons due and payable on November 1, 1934.

68. After said due date, plaintiff, Mondiale, by its duly authorized agent, duly presented each of said coupons at the office or agency of defendant in Amsterdam, Holland, and duly demanded with respect to each of said coupons payment of Sixty-two Guilders Twenty-five cents (62.25), or Twenty-three Hundred and Three Guilders Twenty-five Cents (2,303.25) which defendant had agreed to pay, but defendant failed, neglected and refused to pay said coupons in accordance with the tenor thereof.

[fol. 28] 69. On or about November 1, 1934, when said coupons became due as aforesaid, the market value in lawful money of the United States of Twenty-three Hundred and Three Guilders Twenty-five Cents (2,303.25) was $1,558.53, said guilders being on that day of the market value of 67.6669 cents per guilder or $42.12 per coupon.

70. There is now due and owing by defendant to plaintiff, Mondiale, the sum of $1,558.54, the market value in lawful money of the United States of 2,303.25 guilders, being damages suffered by plaintiff, Mondiale, by reason of the breach by defendant of its obligation to pay said 2,303.25 guilders as aforesaid, no part of which sum has been paid, although payment was duly demanded.

For a thirteenth cause of action, plaintiff, Mondiale Handels-und Verwaltungs, A. G., alleges:

71. Repeats and re-alleges paragraphs numbered 2, 3, 45 and 65 of this complaint as if fully set forth herein.

72. Plaintiff, Mondiale, is the legal owner, holder and bearer of sixteen (16) of said coupons due and payable on November 1, 1934.

73. After said due date, plaintiff, Mondiale, by its duly authorized agent, duly presented each of said coupons at the office or agency of defendant in Amsterdam, Holland, and duly demanded with respect to each of said coupons payment of Thirty-one Guilders Thirteen Cents (31.13), or Four Hundred Ninety-eight Guilders Eight Cents (498.08) which defendant had agreed to pay, but defendant [fol. 29] failed, neglected and refused to pay said coupons in accordance with the tenor thereof.

74. On or about November 1, 1934, when said coupons became due as aforesaid, the market value in lawful money of the United States of Four Hundred Ninety-eight Guilders Eight Cents (498.08) was $337.04, said guilders being on that day of the market value of 67.6669 cents per guilder or $21.06 per coupon.

75. There is now due and owing by defendant to plaintiff, Mondiale, the sum of $337.04, the market value in lawful money of the United States of 498.08 guilders, being damages suffered by plaintiff, Mondiale, by reason of the breach of its obligation to pay said 498.08 guilders as aforesaid, no part of which sum has been paid, although payment was duly demanded.

For a fourteenth cause of action, plaintiff, Mondiale Handels-und Verwaltungs, A. G., alleges:

76. Repeats and re-alleges paragraphs numbered 2, 3, 4 and 65 of this complaint as if fully set forth herein.

77. Plaintiff, Mondiale, is the legal owner, holder and bearer of fifty-seven (57) of said coupons due and payable on May 1, 1935.

78. After said due date, plaintiff, Mondiale, by its duly authorized agent, duly presented each of said coupons at the office or agency of defendant in Amsterdam, Holland,

and duly demanded with respect to each of said coupons payment of Sixty-two Guilders Twenty-five Cents (62.25), [fol. 30] or Three Thousand Five Hundred Forty-eight Guilders Twenty-five Cents (3,548.25) which defendant had agreed to pay, but defendant failed, neglected and refused to pay said coupons in accordance with the tenor thereof.

79. On or about May 1, 1935, when said coupons became due as aforesaid, the market value in lawful money of the United States of Three Thousand Five Hundred Forty-eight Guilders Twenty-five Cents (3,548.25) was $2,406.54, said guilders being on that day of the market value of 67.8164 or $42.22 per coupon.

80. There is now due and owing by defendant to plaintiff, Mondiale, the sum of $2,406.54, the market value in lawful money of the United States of 3,548.25 guilders, being damages suffered by plaintiff, Mondiale, by reason of the breach by defendant of its obligation to pay said 3,548.25 guilders as aforesaid, no part of which sum has been paid, although payment was duly demanded.

For a fifteenth cause of action, plaintiff, Mondiale Handels-und Verwaltungs, A. G., alleges:

81. Repeats and re-alleges paragraphs numbered 2, 3, 56 and 65 of this complaint as if fully set forth herein.

82. Plaintiff, Mondiale, is the legal owner, holder and bearer of twenty (20) of said coupons due and payable May 1, 1935.

83. After said due date, plaintiff, Mondiale, by its duly authorized agent, duly presented each of said coupons at the office or agency of defendant in Amsterdam, Holland, [fol. 31] and duly demanded with respect to each of said coupons payment of Thirty-one Guilders Thirteen Cents (31.13), or Six Hundred Twenty-two Guilders Sixty Cents (622.60) which defendant had agreed to pay, but defendant failed, neglected and refused to pay said coupons in accordance with the tenor thereof.

84. On or about May 1, 1935, when said coupons became due as aforesaid, the market value in lawful money of the United States of Six Hundred Twenty-two Guilders Sixty Cents (622.60) was $422.20, said guilders being on that day

of the market value of 67.8164 cents per guilder or $42.22 per coupon.

85. There is now due and owing by defendant to plaintiff, Mondiale, the sum of $422.20, the market value in lawful money of the United States of 622.60 guilders, being damages suffered by plaintiff, Mondiale, by reason of the breach of its obligation to pay said 622.60 guilders as aforesaid, no part of which sum has been paid, although payment was fully demanded.

For a sixteenth cause of action, plaintiff, Mondiale Handels-und Verwaltungs, A. G., alleges:

86. Repeats and re-alleges paragraphs numbered 2, 3, 10 and 65 of this complaint as if fully set forth herein.

87. Plaintiff, Mondiale, is the legal owner, holder and bearer of ninety-eight (98) of said coupons due and payable on November 1, 1935.

88. After said due date, plaintiff, Mondiale, by its duly [fol. 32] authorized agent, duly presented each of said coupons at the office or agency of defendant in Amsterdam, Holland, and duly demanded with respect to each of said coupons payment of Sixty-two Guilders Twenty-five Cents (62.25) or Six Thousand One Hundred Guilders Fifty Cents (6,100.50), which the defendant had agreed to pay, but defendant failed, neglected and refused to pay said coupons in accordance with the tenor thereof.

89. On or about November 1, 1935, when said coupons became due as aforesaid, the market value in lawful money of the United States of Six Thousand One Hundred Guilders Fifty Cents (6,100.50) was $4,148.34, said guilders being on that day of the market value of 68 cents per guilder or $42.33 per coupon.

90. There is now due and owing by defendant to plaintiff, Mondiale, the sum of $4,148.34, the market value in lawful money of the United States of 6,100.50 guilders, being damages suffered by said plaintiff, Mondiale, by reason of the breach by defendant of its obligation to pay said 6,100.50 guilders as aforesaid, no part of which sum has been paid, although payment was duly demanded.

For a seventeenth cause of action, plaintiff, Mondiale Mandels-und Verwaltungs, A. G., alleges:

91. Repeats and re-alleges paragraphs numbered 2, 3, 16 and 65 of this complaint as if fully set forth herein.

92. Plaintiff, Mondiale, is the legal owner, holder and bearer of twenty-two (22) of said coupons due and payable on November 1, 1935.

[fol. 33] 93. After said due date, plaintiff, Mondiale, by its duly authorized agent, duly presented each of said coupons at the office or agency of defendant in Amsterdam, Holland, and duly demanded with respect to each of said coupons payment of Thirty-one Guilders Thirteen Cents (31.13), or Six Hundred Eighty-four Guilders Eighty-six Cents (684.86) which defendant had agreed to pay, but defendant failed, neglected and refused to pay said coupons in accordance with the tenor thereof.

94. On or about November 1, 1935, when said coupons became due as aforesaid, the market value in lawful money of the United States of Six Hundred Eighty-four Guilders Eighty-six Cents (684.86) was $465.70, said guilders being on that day of the market value of 68 cents per guilder or $21.17 per coupon.

95. There is now due and owing by defendant to plaintiff, Mondiale, $465.70, the market value in lawful money of the United States of 684.86 guilders, being damages suffered by plaintiff, Mondiale, by reason of the breach of its obligation to pay said 684.86 guilders as aforesaid, no part of which sum has been paid, although payment was duly demanded.

For an eighteenth cause of action, plaintiff, Mondiale Handels-und Verwaltungs, A. G., alleges:

96. Repeats and re-alleges paragraphs numbered 2, 3, 22 and 65 of this complaint as if fully set forth herein.

97. Plaintiff, Mondiale, is the legal owner, holder and bearer of sixty-four (64) of said coupons due and payable on May 1, 1936.

[fol. 34] 98. After said due date, plaintiff, Mondiale, by its duly authorized agent, duly presented each of said coupons at the office or agency of defendant in Amsterdam,

Holland, and duly demanded with respect to each of said coupons payment of Sixty-two Guilders Twenty-five Cents (62.25) or Three Thousand Nine Hundred Eighty-Four Guilders (3,984) which defendant had agreed to pay, but defendant failed, neglected and refused to pay said coupons in accordance with the tenor thereof.

99. On or about May 1, 1936, when said guilders became due as aforesaid, the market value in lawful money of the United States of Three Thousand Nine Hundred Eighty-four guilders (3,984) was $2,709.12, said guilders being on that day of the market value of 68 cents per guilder or $42.33 per coupon.

100. There is now due and owing by defendant to plaintiff, Mondiale, the sum of $2,709.12, the market value in lawful money of the United States of 3,984 guilders, being damages suffered by plaintiff, Mondiale, by reason of the breach by defendant of its obligation to pay said 3,984 guilders as aforesaid, no part of which sum has been paid, although payment was duly demanded.

For a nineteenth cause of action, plaintiff, Mondiale Handels-und Verwaltungs, A. G., alleges:

101. Repeats and re-alleges paragraphs numbered 2, 3, 28 and 65 of this complaint, as if fully set forth herein.

102. Plaintiff, Mondiale, is the legal owner, holder and bearer of twelve (12) of said coupons due and payable on May 1, 1936.

[fol. 35] 103. After said due date, plaintiff, Mondiale, by its duly authorized agent, presented each of said coupons at the office or agency of defendant in Amsterdam, Holland, and duly demanded with respect to each of said coupons payment of Thirty-one Guilders Thirteen Cents (31.13), of Three Hundred Seventy-three Guilders Fifty-six Cents (373.56) which defendant had agreed to pay, but defendant failed, neglected and refused to pay said coupons in accordance with the tenor thereof.

104. On or about May 1, 1936, when said coupons became due as aforesaid, the market value in lawful money of the United States of Three Hundred Seventy-three Guilders Fifty-six Cents (373.56) was $254.04, said guilders being on

that day of the market value of 68 cents per guilder or $21.17 per coupon.

105. There is now due and owing by defendant to plaintiff, Mondiale, the sum of $254.04, the market value in lawful money of the United States of 373.56 guilders, being damages suffered by plaintiff, Mondiale, by reason of the breach by defendant of its obligation to pay said 373.56 guilders as aforesaid, no part of which sum has been paid, although payment was duly demanded.

For a twentieth cause of action, plaintiff, Mondiale Handels-und Verwaltungs, A. G., alleges:

106. Repeats and re-alleges paragraphs numbered 65 to 105 both inclusive of this complaint, as if fully set forth herein.

107. By reason of defendant's failure and refusal to pay [fol. 36] said coupons as aforesaid, plaintiff, Mondiale, incurred and paid protest fees and expenses of Thirty Guilders Forty Cents (30.40) on or about June 18, 1935, Fourteen Guilders Twenty Cents (14.20) on or about April 1, 1936, and Eleven Guilders Twenty Cents (11.20) on or about July 9, 1936.

108. The market value of guilders in lawful money of the United States was on or about said dates, as follows:

June 18, 1935	68 cents per guilder.
April 1, 1936	68 cents per guilder.
July 9, 1936	68 cents per guilder.

109. There is now due and owing by the defendant to the plaintiff, Mondiale, the sum of $37.94, the market value of Fifty-five Guilders Eighty Cents (55.80), being damages suffered by plaintiff, Mondiale, by reason of the breach by defendant of its obligation to pay said 55.80 guilders as aforesaid, no part of which sum has been paid, although payment was duly demanded.

For a twenty-first cause of action, plaintiff, Hydropress Handels, A. G., alleges:

110. Plaintiff, Hydropress Handels, A. G. (hereinafter called "Hydropress") at all times hereinafter mentioned was and now is a corporation organized and existing under the laws of the Principality of Liechtenstein, in Europe.

111. Plaintiff, Hydropress, repeats and realleges paragraphs numbered 2, 3 and 4 of this complaint as if fully set forth herein.

[fol. 37] 112. Plaintiff, Hydropress, is the legal owner, holder and bearer of eight (8) of said coupons due and payable on May 1, 1935.

113. After said due date, plaintiff, Hydropress, by its duly authorized agent, duly presented each of said coupons at the office or agency of defendant in Amsterdam, Holland, and duly demanded with respect to each of said coupons payment of Sixty-two Guilders Twenty-five Cents (62.25), or Four Hundred Ninety-eight (498) Guilders which defendant had agreed to pay, but defendant failed, neglected and refused to pay said coupons in accordance with the tenor thereof.

114. On or about May 1, 1935, when said coupons became due as aforesaid, the market value in lawful money of the United States of Four Hundred Ninety-eight (498) Guilders was $337.76, said guilders being on that day of the market value of 67.8164 cents per guilder or $42.22 per coupon.

115. There is now due and owing by defendant to plaintiff, Hydropress, the sum of $337.76, the market value in lawful money of the United States of 498 guilders, being damages suffered by plaintiff, Hydropress, by reason of the breach by defendant of its obligation to pay said 498 guilders as aforesaid, no part of which sum has been paid, although payment was duly demanded.

For a twenty-second cause of action, plaintiff, Hydropress Handels, A. G., alleges:

116. Plaintiff, Hydropress Handels, A. G., repeats and re-alleges paragraphs numbered 2, 3, 56 and 110 of this complaint as if fully set forth herein.

[fol. 38] 117. Plaintiff, Hydropress, is the legal owner, holder and bearer of four (4) of said coupons due and payable May 1, 1935.

118. After said due date, plaintiff, Hydropress, by its duly authorized agent, duly presented each of said coupons at the office or agency of defendant in Amsterdam, Holland, and duly demanded with respect to each of said coupons

payment of Thirty-one Guilders Thirteen Cents (31.13) or One Hundred Twenty-four Guilders Fifty-two Cents (124.52) which defendant had agreed to pay, but defendant failed, neglected and refused to pay said coupons in accordance with the tenor thereof.

119. On or about May 1, 1935, when said coupons became due as aforesaid, the market value in lawful money of the United States of One Hundred Twenty-four Guilders Fifty-two Cents (124.52) was $84.44, said guilders being on that day of the market value of 67.8164 cents per guilder or $21.11 per coupon.

120. There is now due and owing by defendant to plaintiff, Hydropress, the sum of $84.44, the market value in lawful money of the United States of 124.52 guilders, being damages suffered by plaintiff, Hydropress, by reason of the breach by defendant of its obligation to pay said 124.52 guilders as aforesaid, no part of which sum has been paid although payment was duly demanded.

For a twenty-third cause of action, plaintiff, Hydropress Handels, A. G., alleges:

121. Repeats and re-alleges paragraphs numbered 110 to 120 both inclusive of this complaint as if fully set forth herein.

122. By reason of defendant's failure and refusal to pay said coupons as aforesaid, plaintiff, Hydropress, incurred [fol. 39] and paid protest fees and expenses of Fourteen Guilders Eighty Cents (14.80) on or about July 20, 1936.

123. The market value of guilders in lawful money of the United States was on or about July 20, 1936, 68 cents per guilder.

124. There is now due and owing by the defendant to the plaintiff, Hydropress, the sum of $10.06, the market value of Fourteen Guilders Eighty Cents (14.80), being damages suffered by plaintiff, Hydropress, by reason of the breach by defendant of its obligation to pay said 14.80 guilders as aforesaid, no part of which has been paid, although payment was duly demanded.

Wherefore, plaintiff, Treuhand, demands judgment against the defendant in the sum of $19,038.70 with interest,

together with the costs and disbursements of this action; and plaintiff, Maatschappij, demands judgment against the defendant in the sum of $16,987.20 with interest, together with the costs and disbursements of this action; and plaintiff, Mondiale, demands judgment against the defendant in the sum of $12,339.49 with interest, together with the costs and disbursements of this action; and plaintiff, Hydropress, demands judgment against the defendant in the sum of $432.26 with interest, together with the costs and disbursements of this action.

Harry Hoffman, Attorney for Plaintiffs, Office and P. O. Address, 30 Pine Street, Borough of Manhattan, New York, N. Y.

(Verified by Harry Hoffman on November 20, 1936.)

[fol. 40] EXHIBIT "A", ANNEXED TO AMENDED COMPLAINT

(First Lien and Refunding Mortgage Bond)

UNITED STATES OF AMERICA,
Commonwealth of Pennsylvania:

No. 00000	No. 00000
$1,000 U. S. Gold	$1,000 U. S. Gold
or	or
£205.15.3. Stg.	£205.15.3. Stg.
or	or
2,490. Guilders	2,490. Guilders

Bethlehem Steel Company

First Lien and Refunding Mortgage Five Per Cent Thirty-Year Gold Bond

Series A

Bethlehem Steel Company (hereinafter called the Company), for value received, hereby promises to pay to the bearer, or if registered, to the registered holder of this bond, on the first day of May, 1942, in the City of New York, U. S. A. One Thousand dollars, or in London, England, Two Hundred and Five Pounds, Fifteen Shillings, Three Pence Sterling, or in Amsterdam, Holland, Two Thousand Four Hundred and Ninety Guilders, and to pay interest on said principal amount from May 1, 1912, in said

respective currencies, at the rate of five per cent per annum, semi-annually on the first day of May and the first day of November in each year, but only upon presentation and [fol. 41] surrender, as they severally mature, of the coupons therefor hereto annexed. Payment of the principal and interest of this bond will be made at the office or agency of the Company in the Borough of Manhattan, in said City of New York, in gold coin of the United States of America, of or equal to the standard of weight and fineness as it existed on May 1, 1912, or, at the option of the holder, at designated offices in said foreign cities and countries, respectively, at which it is expressed to be payable.

Both principal and interest of this bond are payable without deduction for any tax or taxes which the Company may be required to pay thereon or to retain therefrom under any present or future law of the United States of America, or of any state, county, municipality or other taxing authority therein.

This bond is one of a duly authorized issue of coupon bonds and registered bonds of the company, known as its First Lien and Refunding Mortgage Five Per Cent Thirty-Year Gold Bonds, limited to the aggregate principal amount of Fifty Million Dollars ($50,000,000) at any one time outstanding, issued and to be issued under and in pursuance of, and all equally secured by, a mortgage and deed of trust dated May 1, 1912, executed by the Company to the Equitable Trust Company of New York, as Trustee, to which mortgage and deed of trust reference is hereby made for a statement of the property mortgaged and pledged and of the nature and extent of the security.

The bonds of said issue are subject to redemption as a whole or in part at the option of the Company or its successors at a premium of five per cent and accrued interest on any semi-annual interest day upon twelve weeks pre- [fol. 42] vious published notice, and to like redemption at the same price through the operation of the sinking fund, as provided in said mortgage and deed of trust.

In the event of certain defaults specified in said mortgage and deed of trust, the principal of the bonds issued thereunder may become or be declared due and payable in the manner and with the effect provided in said mortgage and deed of trust.

This bond shall pass by delivery, unless it shall be registered in the name of the owner at the office or agency of the Company, in the Borough of Manhattan in said City of New York, such registration being noted on the bond by or on behalf of the Company. After such registration no transfer shall be valid unless made at said office or agency by the registered holder hereof in person or by his duly authorized attorney and similarly noted on the bond, but the same may be discharged from registration by being in like manner transferred to bearer, and thereupon transferability by delivery shall be registered; but this bond may again from time to time be registered or transferred to bearer as before. Such registration, however, shall not affect the negotiability of the coupons, which shall continue to be transferable by delivery merely.

The holder of any coupon, bond or bonds, of the same series may, at his option, surrender for cancellation his bond or bonds (in the aggregate principal amount of $500 or some multiple thereof) with all unmatured coupons thereto appertaining, in exchange for a registered bond without coupons for the same aggregate principal amount, payable as to principal and interest only in said City of New York and in gold coin of the United States of America, as provided in said mortgage and deed of trust, and on payment, if the Company shall require it, of the transfer [fol. 43] charges therein provided for.

No recourse shall be had for the payment of the principal or interest of this bond, or for any claim based hereon, or otherwise in respect hereof or of said mortgage and deed of trust, against any incorporator, stockholder, officer or director of the Company or of any successor corporation, either directly or through the Company or such successor corporation, whether by virtue of any law or by the enforcement of any assessment or otherwise.

This bond shall not be valid or become obligatory for any purpose until it shall have been authenticated by the certificate hereon endorsed of the Trustee under said mortgage and deed of trust.

In witness whereof, Bethlehem Steel Company has caused these presents to be signed in its name by its President or one of its Vice-Presidents, and its corporate seal to be hereunto affixed and to be attested by its Secretary or one of its Assistant Secretaries, and coupons for interest bear-

ing the engraved facsimile signature of its Treasurer to be attached hereto, as of the first day of May, 1912.

Bethlehem Steel Company, by —— ——, Vice-President.

Attest: —— ——, Assistant Secretary.

[fol. 44] EXHIBIT "B", ANNEXED TO AMENDED COMPLAINT

On the first day of May 1935 unless the Bond, hereinafter mentioned, shall have been called for previous redemption $25.00

Bethlehem Steel Company

will pay to bearer at its office or agency £5.2.10
in the City of New York, U. S. A., Twenty-Five Dollars, United States Gold Coin, or 62.25 Guilders
in London, England, Five Pounds, Two Shillings, Ten Pence, or in Amsterdam, Holland, Sixty-Two Guilders Twenty-Five Cents, being six months interest then due on its First Lien and Refunding Mortgage Five Per Cent Thirty-Year Gold Bond.

$25.00 Series A No. M15401

(signed)— B. H. Jones, Treasurer No. 46.

"B"-1

On the first day of Nov. 1934 unless the Bond, hereinafter mentioned shall have been called for previous redemption, $12.50

Bethlehem Steel Company

will pay to bearer at its office or agency in £2.11.5
the City of New York, U. S. A., Twelve and One-Half Dollars, United States Gold 31.13 Guilders
Coin, or in London, England, Two Pounds Eleven Shillings, Five Pence, or in Amsterdam, Holland, Thirty-One Guilders, Thirteen Cents, being six months interest then due on its First Lien and Refunding Mortgage Five Per Cent Thirty-Year Gold Bond.

$12.50 Series A No. D267

(signed)— B. H. Jones, Treasurer No. 45.

"B"-2

[fol. 45] IN SUPREME COURT OF NEW YORK, COUNTY OF NEW YORK

AMENDED ANSWER

The defendant Bethlehem Steel Company, by Cravath, de Gersdorff, Swaine & Wood, its attorneys, for its amended answer to the amended complaint herein:

1. Refers to the bonds and coupons, respectively, mentioned in paragraph 4 of said complaint for a statement of the terms thereof, respectively, and, except as thus answered, denies each and every allegation contained in paragraph 4 of said complaint.

2. Denies any knowledge or information sufficient to form a belief as to each and every allegation contained in paragraphs 5, 6 and 7 of said complaint except that defendant denies that defendant failed, neglected or refused to pay the coupons referred to in said paragraph 6 in accordance with the tenor thereof.

3. Denies each and every allegation contained in paragraph 8 of said complaint except that defendant admits that the sum of $211.08 mentioned in said paragraph has not been paid.

4. Refers to the bonds and coupons, respectively, mentioned in paragraph 10 of said complaint for a statement of [fol. 46] the terms thereof, respectively, and, except as thus answered, denies each and every allegation contained in paragraph 10 of said complaint.

5. Denies any knowledge or information sufficient to form a belief as to each and every allegation contained in paragraphs 11, 12 and 13 of said complaint except that defendant denies that defendant failed, neglected or refused to pay the coupons referred to in said paragraph 12 in accordance with the tenor thereof.

6. Denies each and every allegation contained in paragraph 14 of said complaint except that defendant admits that the sum of $8,339.01 mentioned in said paragraph has not been paid.

7. Refers to the bonds and coupons, respectively, mentioned in paragraph 16 of said complaint for a statement of the terms thereof, respectively, and, except as thus an-

swered, denies each and every allegation contained in paragraph 16 of said complaint.

8. Denies any knowledge or information sufficient to form a belief as to each and every allegation contained in paragraphs 17, 18 and 19 of said complaint except that defendant denies that defendant failed, neglected or refused to pay the coupons referred to in said paragraph 18 in accordance with the tenor thereof.

9. Denies each and every allegation contained in paragraph 20 of said complaint except that defendant admits that the sum of $635.05 mentioned in said paragraph has not been paid.

[fol. 47] 10. Refers to the bonds and coupons, respectively, mentioned in paragraph 22 of said complaint for a statement of the terms thereof, respectively, and, except as thus answered, denies each and every allegation contained in paragraph 22 of said complaint.

11. Denies any knowledge or information sufficient to form a belief as to each and every allegation contained in paragraphs 23, 24 and 25 of said complaint except that defendant denies that defendant failed, neglected or refused to pay the coupons referred to in said paragraph 24 in accordance with the tenor thereof.

12. Denies each and every allegation contained in paragraph 26 of said complaint except that defendant admits that the sum of $8,846.97 mentioned in said paragraph has not been paid.

13. Refers to the bonds and coupons, respectively, mentioned in paragraph 28 of said complaint for a statement of the terms thereof, respectively, and, except as thus answered, denies each and every allegation contained in paragraph 28 of said complaint.

14. Denies any knowledge or information sufficient to form a belief as to each and every allegation contained in paragraphs 29, 30 and 31 of said complaint except that defendant denies that defendant failed, neglected or refused to pay the coupons referred to in said paragraph 30 in accordance with the tenor thereof.

15. Denies each and every allegation contained in paragraph 32 of said complaint except that defendant admits

[fol. 48] that the sum of $975.11 mentioned in said paragraph has not been paid.

16. Denies any knowledge or information sufficient to form a belief as to each and every allegation contained in paragraphs 34 and 35 of said complaint.

17. Denies each and every allegation contained in paragraph 36 of said complaint except that defendant admits that the sum of $31.48 mentioned in said paragraph has not been paid.

18. Refers to the bonds and coupons, respectively, mentioned in paragraph 39 of said complaint for a statement of the terms thereof, respectively, and, except as thus answered, denies each and every allegation contained in paragraph 39 of said complaint.

19. Denies any knowledge or information sufficient to form a belief as to each and every allegation contained in paragraphs 40, 41 and 42 of said complaint except that defendant denies that defendant failed, neglected or refused to pay the coupons referred to in said paragraph 41 in accordance with the tenor thereof.

20. Denies each and every allegation contained in paragraph 43 of said complaint except that defendant admits that the sum of $6,360.52 mentioned in said paragraph has not been paid.

21. Refers to the bonds and coupons, respectively, mentioned in paragraph 45 of said complaint for a statement of the terms thereof, respectively, and, except as thus an-
[fol. 49] swered, denies each and every allegation contained in paragraph 45 of said complaint.

22. Denies any knowledge or information sufficient to form a belief as to each and every allegation contained in paragraphs 46, 47 and 48 of said complaint except that defendant denies that defendant failed, neglected or refused to pay the coupons referred to in said paragraph 47 in accordance with the tenor thereof.

23. Denies each and every allegation contained in paragraph 49 of said complaint except that defendant admits that the sum of $547.68 mentioned in said paragraph has not been paid.

24. Denies any knowledge or information sufficient to form a belief as to each and every allegation contained in paragraphs 51, 52 and 53 of said complaint except that defendant denies that defendant failed, neglected or refused to pay the coupons referred to in said paragraph 52 in accordance with the tenor thereof.

25. Denies each and every allegation contained in paragraph 54 of said complaint except that defendant admits that the sum of $8,949.71 mentioned in said paragraph has not been paid.

26. Refers to the bonds and coupons, respectively, mentioned in paragraph 56 of said complaint for a statement of the terms thereof, respectively, and, except as thus answered, denies each and every allegation contained in paragraph 56 of said complaint.

[fol. 50] 27. Denies any knowledge or information sufficient to form a belief as to each and every allegation contained in paragraphs 57, 58 and 59 of said complaint except that defendant denies that defendant failed, neglected or refused to pay the coupons referred to in said paragraph 58 in accordance with the tenor thereof.

28. Denies each and every allegation contained in paragraph 60 of said complaint except that defendant admits that the sum of $633.23 mentioned in said paragraph has not been paid.

29. Denies any knowledge or information sufficient to form a belief as to each and every allegation contained in paragraphs 62 and 63 of said complaint.

30. Denies each and every allegation contained in paragraph 64 of said complaint except that defendant admits that the sum of $496.06 mentioned in said paragraph has not been paid.

31. Denies any knowledge or information sufficient to form a belief as to each and every allegation contained in paragraphs 67, 68 and 69 of said complaint except that defendant denies that defendant failed, neglected or refused to pay the coupons referred to in said paragraph 68 in accordance with the tenor thereof.

32. Denies each and every allegation contained in paragraph 70 of said complaint except that defendant admits

that the sum of $1,558.54 mentioned in said paragraph has not been paid.

[fol. 51] 33. Denies any knowledge or information sufficient to form a belief as to each and every allegation contained in paragraphs 72, 73 and 74 of said complaint except that defendant denies that defendant failed, neglected or refused to pay the coupons referred to in said paragraph 73 in accordance with the tenor thereof.

34. Denies each and every allegation contained in paragraph 75 of said complaint except that defendant admits that the sum of $337.04 mentioned in said paragraph has not been paid.

35. Denies any knowledge or information sufficient to form a belief as to each and every allegation contained in paragraphs 77, 78 and 79 of said complaint except that defendant denies that defendant failed, neglected or refused to pay the coupons referred to in said paragraph 78 in accordance with the tenor thereof.

36. Denies each and every allegation contained in paragraph 80 of said complaint except that defendant admits that the sum of $2,406.54 mentioned in said paragraph has not been paid.

37. Denies any knowledge or information sufficient to form a belief as to each and every allegation contained in paragraphs 82, 83 and 84 of said complaint except that defendant denies that defendant failed, neglected or refused to pay the coupons referred to in said paragraph 83 in accordance with the tenor thereof.

38. Denies each and every allegation contained in paragraph 85 of said complaint except that defendant admits [fol. 52] that the sum of $422.20 mentioned in said paragraph has not been paid.

39. Denies any knowledge or information sufficient to form a belief as to each and every allegation contained in paragraphs 87, 88 and 89 of said complaint except that defendant denies that defendant failed, neglected or refused to pay the coupons referred to in said paragraph 88 in accordance with the tenor thereof.

40. Denies each and every allegation contained in paragraph 90 of said complaint except that defendant admits

that the sum of $4,148.34 mentioned in said paragraph has not been paid.

41. Denies any knowledge or information sufficient to form a belief as to each and every allegation contained in paragraphs 92, 93 and 94 of said complaint except that defendant denies that defendant failed, neglected or refused to pay the coupons referred to in said paragraph 93 in accordance with the tenor thereof.

42. Denies each and every allegation contained in paragraph 95 of said complaint except that defendant admits that the sum of $465.70 mentioned in said paragraph has not been paid.

43. Denies any knowledge or information sufficient to form a belief as to each and every allegation contained in paragraphs 97, 98 and 99 of said complaint except that defendant denies that defendant has failed, neglected or refused to pay the coupons referred to in said paragraph 98 in accordance with the tenor thereof.

[fol. 53] 44. Denies each and every allegation contained in paragraph 100 of said complaint except that defendant admits that the sum of $2,709.12 mentioned in said paragraph has not been paid.

45. Denies any knowledge or information sufficient to form a belief as to each and every allegation contained in paragraphs 102, 103 and 104 of said complaint except that defendant denies that defendant failed, neglected or refused to pay the coupons referred to in said paragraph 103 in accordance with the tenor thereof.

46. Denies each and every allegation contained in paragraph 105 of said complaint except that defendant admits that the sum of $254.04 mentioned in said paragraph has not been paid.

47. Denies any knowledge or information sufficient to form a belief as to each and every allegation contained in paragraphs 107 and 108 of said complaint.

48. Denies each and every allegation contained in paragraph 109 of said complaint except that defendant admits that the sum of $37.94 mentioned in said paragraph has not been paid.

49. Denies any knowledge or information sufficient to form a belief as to each and every allegation contained in paragraphs 112, 113 and 114 of said complaint except that defendant denies that defendant failed, neglected or refused to pay the coupons mentioned in said paragraph 113 in accordance with the tenor thereof.

[fol. 54] 50. Denies each and every allegation contained in paragraph 115 of said complaint except that defendant admits that the sum of $337.76 mentioned in said paragraph has not been paid.

51. Denies any knowledge or information sufficient to form a belief as to each and every allegation contained in paragraphs 117, 118 and 119 of said complaint except that defendant denies that defendant failed, neglected or refused to pay the coupons mentioned in said paragraph 118 in accordance with the tenor thereof.

52. Denies each and every allegation contained in paragraph 120 of said complaint except that defendant admits that the sum of $84.44 mentioned in said paragraph has not been paid.

53. Denies any knowledge or information sufficient to form a belief as to each and every allegation contained in paragraphs 122 and 123 of said complaint.

54. Denies each and every allegation contained in paragraph 124 of said complaint except that defendant admits that the sum of $10.06 mentioned in said paragraph has not been paid.

For a first separate and complete defense to each of the causes of action alleged in said complaint defendant alleges upon information and belief:

55. All of the coupons of which in the First, Second, Third, Fourth and Fifth causes of action alleged in said complaint the plaintiff Anglo-Continentale Treuhand, A. G., [fol. 55] is alleged to be the legal owner, holder and bearer were on and after June 5, 1933, owned by persons resident in the United States; all of the coupons of which in the Seventh, Eighth, Ninth and Tenth causes of action alleged in said complaint the plaintiff Anglo-Continentale Trust Maatschappij (Anglo-Continental Trust Company) is alleged to be the legal owner, holder and bearer were on and

after June 5, 1933, owned by persons resident in the United States; all of the coupons of which in the Twelfth, Thirteenth, Fourteenth, Fifteenth, Sixteenth, Seventeenth, Eighteenth and Nineteenth causes of action alleged in said complaint the plaintiff Mondiale Handels-Und Verwaltungs, A. G., is alleged to be the legal owner, holder and bearer were on and after June 5, 1933, owned by persons resident in the United States; all of the coupons of which in the Twenty-first and Twenty-second causes of action alleged in said complaint the plaintiff Hydropress Handels, A. G., is alleged to be the legal owner, holder and bearer were on and after June 5, 1933, owned by persons resident in the United States.

56. The bonds to which the coupons referred to in the complaint are or were appurtenant were continuously after June 5, 1933, and to and including the date of presentation for payment of such coupons, owned by residents of the United States, and the coupons referred to in the complaint were attached to said bonds and were likewise owned by residents of the United States from before June 5, 1933 until on or immediately before the respective due dates of said coupons or thereafter. The interests which the respective plaintiffs allege that they have in said coupons were [fol. 56] acquired by said plaintiffs, respectively, from residents of the United States on or shortly before the respective due dates of said coupons or thereafter with full notice and knowledge of Public Resolution No. 10 of the 73rd Congress, entitled "A Joint Resolution to assure uniform value to the coins and currency of the United States", approved June 5, 1933, with intent to evade the application of said Joint Resolution.

57. By reason of the provisions of Section 5 (b) of an Act of Congress entitled "An Act to define, regulate and punish trading with the enemy, and for other purposes", approved October 6, 1917; of an Act of Congress entitled "An act to provide relief in the existing National Emergency in banking, and for other purposes" approved March 9, 1933; of Title III of an Act of Congress entitled "An Act to relieve the existing national economic emergency by increasing agricultural purchasing power, to raise revenue for extraordinary expenses incurred by reason of such emergency, to provide emergency relief with respect to agricultural indebtedness, to provide for the orderly liquidation of joint stock land banks, and for other purposes", "Title III—Fi-

nancing—and exercising power conferred by Section 8 of Article I of the Constitution: To coin money and to regulate the value thereof.", approved May 12, 1933; of Public Act No. 87 of the Seventy-Third Congress known as "The Gold Reserve Act of 1934", approved January 30, 1934; of executive orders, proclamations and regulations made pursuant to such Acts, and by reason of said Public Resolution No. 10 of the Seventy-Third Congress, entitled "A Joint Resolution to assure uniform value to the coins and currency of the United States", approved June 5, 1933, defendant has not [fol. 57] been since June 5, 1933, and is not now, under any obligation to make payment in guilders of the interest called for by any of the coupons referred to in paragraph 55 of this answer to the respective plaintiffs who are respectively the successors in interest of said persons resident in the United States that owned said coupons on and after June 5, 1933.

For a second separate and partial defense to each of the causes of action alleged in said complaint defendant alleges upon information and belief:

58. Defendant repeats and realleges each and every allegation contained in paragraphs 55, 56 and 57 of this answer with the same force and effect as if herein set forth at length.

59. If the defendant was under any obligation upon the maturity of the coupons referred to in said paragraph 55 hereof to pay said coupons in guilders, it was not, and has not since been and is not now, under any obligation to make payment of the interest called for by said coupons to the respective plaintiffs in guilders exceeding the number equivalent at current rates of exchange on the maturity date of said coupons to the number of dollars, lawful currency of the United States of America, specified in said respective coupons, viz.: Twenty-five dollars ($25) in payment of each such coupon appurtenant to a bond for One thousand dollars and Twelve and 50/100 dollars ($12.50) in payment of each such coupon appurtenant to a bond for Five hundred dollars.

[fol. 58] For a third separate and complete defense to each of the causes of action alleged in said complaint defendant alleges upon information and belief:

60. The respective holders of the bonds to which the respective coupons referred to in the plaintiffs' complaint are

or were appurtenant have not at any time made an election to receive payment of the interest upon said bonds in guilders, and the respective plaintiffs did not exercise or purport to exercise election to receive payment of such coupons in guilders until after the respective due dates of said coupons; thereby the option, if any, to demand payment thereof in guilders or otherwise than in money of the United States lapsed, and defendant has elected and does now elect to pay each of said coupons in money of the United States in the amount of such money therein specified, but the respective plaintiffs have not presented said coupons for payment in such money of the United States or surrendered or offered to surrender said coupons upon such payment thereof as provided in said bonds and said coupons.

For a fourth separate and partial defense to each of the causes of action alleged in said complaint defendant upon information and belief:

61. Repeats and realleges each and every allegation contained in paragraph 60 of this answer with the same force and effect as if herein set forth at length.

[fol. 59] 62. On the respective due dates of said coupons the defendant was ready, willing and able to pay said coupons as they respectively became due in money of the United States of America upon presentation and surrender of said coupons, respectively, at the office or agency of the defendant in the City of New York in said United States as provided in said bonds and said coupons. If, notwithstanding that said coupons have not been presented for surrender and payment in said City of New York, defendant is liable herein upon said coupons in any amount, it is not liable thereon in an amount in excess of the amount in lawful currency of the United States of America specified in said respective coupons, viz., Twenty-five dollars ($25) in payment of each such coupon appurtenant to a bond for One Thousand dollars and Twelve and 50/100ths dollars ($12.50) in payment of each such coupon appurtenant to a bond for Five Hundred dollars, and the defendant is not liable for interest on any such amount.

For a fifth separate and complete defense to each of the causes of action alleged in said complaint, defendant alleges upon information and belief:

63. Defendant is a Pennsylvania corporation, domestic to the United States. At all times mentioned in the complaint, the Internal Revenue Laws of the United States, and the Regulations duly issued thereunder by the Commissioner of Internal Revenue of the United States, required that all domestic corporations paying interest upon bonds, or pay-
[fol. 60] ing coupons for interest upon bonds, should be entitled to receive, as a condition precedent to payment, certificates from the parties presenting such bonds or such coupons for such payment known as "ownership certificates" and showing the facts as to the ownership of such bonds or of the bonds to which such coupons were or had been appurtenant. No such certificates were filed in respect of the bonds or coupons referred to in the complaint, notwithstanding that the same were duly demanded.

Wherefore defendant demands judgment dismissing the complaint herein with the costs and disbursements of this action.

Cravath, deGersdorff, Swaine & Wood, Attorneys for Defendant, No. 15 Broad Street, New York, N. Y.

(Verified by Wm. J. Brown on January 26, 1937.)

[fol. 61] In Supreme Court of New York, County of New York

Affidavit of Arpad Plesch, Read in Support of Motion

State of New York,
County of New York, ss:

Arpad Plesch, being duly sworn, deposes and says:

I am the Managing Director of each of the plaintiffs herein and am familiar with all the facts and proceedings herein. I am duly authorized to make this affidavit.

The plaintiffs are all foreign corporations. The plaintiffs, Anglo-Continentale Treuhand, A. G. (hereinafter referred to as "Treuhand"), Mondiale Handels-und Verwaltungs, A. G. (hereinafter referred to as "Mondiale") and Hydropress Handels, A. G. (hereinafter referred to as "Hydropress") are all duly organized and existing under the laws of the Principality of Leichtenstein, in Europe. The plaintiff Anglo-Continentale Trust Maatschappij is duly organized and existing under the laws of The Netherlands. The fact that the plaintiffs are all aliens is not denied.

The attorneys for the defendant admitted service of the summons and complaint herein on October 8, 1936; there-

after an amended complaint was served on the attorneys for the defendant on November 21, 1936.

[fol. 62] Thereafter defendant moved to dismiss the amended complaint upon the ground that the Court had not jurisdiction of the subject of the action, which motion was on December 23, 1936 denied by Mr. Justice McCook. The answer to the amended complaint was served by mail and received on January 5, 1937, and an amended answer to the amended complaint was served on January 27, 1937.

Each cause of action stated in the complaint is to recover a debt or liquidated demand, arising out of an express contract, for damages for refusal to pay in Amsterdam, Holland, a fixed number of Dutch guilders as specified or set forth in bearer interest coupons issued by defendant, which coupons were presented by plaintiffs for payment at the office or agency of defendant in Amsterdam, Holland (the place of payment therein designated) and payment of which was then and there refused.

Each coupon upon which this suit is brought was detached from one of the coupon bonds issued by defendant, known as its First Lien & Refunding Mortgage 5% 30-Year Gold Bonds, Series A, dated May 1, 1912, and due May 1, 1942.

A copy of the form of one of said bonds is attached to the amended complaint as Exhibit "A".

A copy of the form of said coupons is attached to the amended complaint as Exhibits "B" and "B"-1.

The form of one of said coupons is here set forth for convenience, as follows:

"On the first day of May 1935 unless the Bond, hereinafter mentioned, shall have been called for previous redemption, Beth- [fol. 63] lehem Steel Company will pay to bearer at its office, or agency, in the City of New York, U. S. A., Twenty-Five Dollars, United States Gold Coin, or in London, England, Five Pounds, Two Shillings, Ten Pence, or in Amsterdam, Holland, Sixty-Two Guilders Twenty-Five Cents, being six months interest then due on its First Lien and Refunding Mortgage Five Per Cent. Thirty-Year Gold Bond.

$25.00

£5.2.10

62.25 Guilders

$25.00. Series A No. M15401

(Signed) B. H. Jones, Treasurer No. 46

On the first day of Nov. 1934 unless the Bond, hereinafter mentioned shall have been called for previous redemption, Bethlehem Steel Company will pay to bearer at its office or agency in the City of New York, U. S. A., Twelve and One-Half Dollars, United States Gold Coin, or in London, England, Two Pounds Eleven Shillings, Five Pence, or in Amsterdam, Holland, Thirty One Guilders, Thirteen Cents, being six months interest then due on its First Lien and Refunding Mortgage Five Per Cent. Thirty-Year Gold Bond.

$12.50
£2.11.5
31.13 Guilders

$12.50. Series A No. D267

(Signed) B. H. Jones, Treasurer No. 45

[fol. 64] In the spring of 1912, $15,200,000 of said bonds were originally issued, and subsequently additional bonds were issued, bringing the total amount issued to $40,000,000. Thereafter, there were cancelled or held in the sinking fund a principal amount of said bonds unknown to plaintiffs.

The said $15,200,000 principal amount of said bonds which were issued in the spring of 1912 were purchased from defendant by Bethlehem Steel Corporation (its parent) and sold by the latter to a group of bankers who offered them for sale simultaneously in the United States and in Amsterdam, Holland, by Messrs. Hope & Company and in London, England, by Messrs. Salomon & Company. The circular offering the bonds in Holland issued by Hope & Company in Amsterdam was in the Dutch language.

A translation of a portion of the said circular reads as follows:

"Principal and interest are payable in New York in gold coin of the United States of or equal to the present standard of weight and fineness, and in Amsterdam at the fixed rate of exchange or Fl. 2.49 per dollar without deduction of any tax which the Company may have to pay thereon, or deduct therefrom, in accordance with any existing or future law of the United States or of any state, county or municipality thereof."

These facts appear from the affidavit of William J. Brown, Assistant Treasurer of the defendant Bethlehem

Steel Company and Treasurer of Bethlehem Steel Corpora-
[fol. 65] tion, sworn to December 31, 1934, which affidavit was submitted in opposition to the motion of City Bank Farmers Trust Company for summary judgment against the defendant in its suit on coupons of the same issue as those at bar, and from the affidavit of William W. Miller, sworn to May 8, 1936, in support of a motion for summary judgment against the same defendant in an action in this court entitled Nederlandsche Middenstandsbank N. V. and others against this defendant.

In the said affidavit of William J. Brown, submitted in opposition to the motion for summary judgment in the City Bank Farmers Trust Company v. Bethlehem Steel Company case, he said (at fol. 122 of the Papers on Appeal in that case):

"At the same time at which said $15,200,000 face amount of First Lien and Refunding Bonds were being offered for sale in the United States by New York bankers, *simultaneous but entirely separate and distinct* offerings were being made in London by Messrs. Salomon & Co. and in Amsterdam by Messrs. Hope & Co. A photostatic copy of the circular issued by Salomon & Co. in London and a photostatic copy of a translation of the circular issued by Hope & Co. in Amsterdam are attached hereto, marked Exhibit F, and made a part hereof." (Italics mine.)

Annexed as Exhibit E to the said affidavit of William J. Brown is a letter written by William Salomon & Co., bankers, circulated to the public at the time of the sale of said bonds (Fols. 156-159 of the Papers on Appeal in the City Bank Farmers Trust Company case) wherein appears the following:

[fol. 66] "A simultaneous offering will be made abroad in London, England, by Messrs. Salomon & Co. and in Amsterdam, Holland, by Messrs. Hope & Co., *thus assuring an international market.*" (Italics mine.)

Such expressed purpose (providing for payment of the interest on and the principle of such bonds in foreign countries) was stated by defendant itself, in its letter of January 11, 1934, hereinafter referred to (Exhibit M-1) to be

"to facilitate their sale and distribution in such countries by enabling residents of such countries who might purchase

any of such bonds to collect such interest and principal at the respective maturity dates in such countries and in the currencies of such countries in specified amounts."

I am now and have for many years been familiar with quotations for foreign exchange and have actually traded in foreign exchange, and have kept actively and closely in touch with foreign exchange fluctuations. From my personal knowledge, acquired through my dealings and through a continuous study and examinations of financial reports and publications on the subject issued both in America and abroad, I am in a position to say that quotations published in the Commercial & Financial Chronicle are generally accepted as true and accurate. The rates of exchange hereinafter quoted are the same rates which prevailed in New York City for the purchase of guilders and which also prevailed in Amsterdam, Holland.

[fol. 67] As to the coupons owned by "*Treuhand*": Plaintiff "Treuhand" was and now is the legal owner, holder and bearer of coupons as follows:

Due Date of Coupons	Number of Coupons	Amount of Guilders specified in each coupon	Total Number of Guilders represented thereby
May 1, 1935	5	62.25	311.25
Nov. 1, 1935	167*	62.25	10,395.75
Nov. 1, 1935	30	31.13	933.90
May 1, 1936	209	62.25	13,010.25
May 1, 1936	46	31.13	1,433.98

Plaintiff "Treuhand" also has a cause of action for 46.30 guilders representing protest fees and expenses consequent upon defendant's refusal to pay the aforesaid coupons on demand.

The various coupons above referred to belonging to "Treuhand" were presented for payment in Amsterdam, Holland, at the office or agency of the defendant, Hope & Co., and demand then and there made for the payment thereof in the number of guilders specified in each coupon respectively, on the following dates: April 17, 1936, July 2, 1936 and July 20, 1936.

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* Paragraph numbered "11" of the amended complaint erroneously alleges 197 coupons.

A photostatic copy of the exemplified demands and protests and of exemplified sworn translations thereof are annexed to this affidavit, marked Exhibits A, B, C and D, respectively, and made a part hereof as if fully set forth herein.

In order to determine the market value in lawful money of the United States as of the respective due dates of the re-
[fol. 68] spective coupons owned by "Treuhand", and as of the respective dates on which demand for payment and refusal of payment was made in Amsterdam, Holland, of the number of guilders to which the plaintiff "Treuhand" is entitled in respect to the aforesaid coupons, I have examined the various pertinent issues of the Commercial & Financial Chronicle, a recognized financial publication, and find the following quotations in respect to the values of the guilder on the respective pertinent dates:

Date	Value
May 1, 1935	67.8164 cents.
Nov. 1, 1935	67.9228 cents.
May 1, 1936	67.8328 cents.
April 17, 1936	67.8828 cents.
July 2, 1936	68.1646 cents.
July 20, 1936	68.1075 cents.

Taking the lowest rate of exchange which prevailed during the entire period from May 1, 1935, through and including the date of the last protest (namely, the rate of 67.8164 cents per guilder), the market value of the 26,131.43 guilders due to plaintiff "Treuhand" for unpaid coupons and protest fees, as above set forth (the subject of the first, Second, Third, Fourth, Fifth and Sixth causes of action) expressed in lawful money of the United States was and is not less than $17,721.39.

As to the coupons owned by "*Maatschappij*": Plaintiff "Maatschappij" was and now is the legal owner, holder and bearer of coupons as follows:

[fol. 69]

Due Date of Coupons	Number of Coupons	Amount of Guilders specified in each coupon	Total Number of Guilders represented thereby
Nov. 1, 1934	151	62.25	9,399.75
Nov. 1, 1934	26	31.13	809.38
May 1, 1935	212	62.25	13,197.
May 1, 1935	30	31.13	933.90

Plaintiff "Maatschappij" also has a cause of action for 72.95 guilders representing protest fees and expenses consequent upon defendant's refusal to pay the aforesaid coupons on demand.

The various coupons above referred to belonging to "Maatschappij" were presented for payment in Amsterdam, Holland, at the office or agency of the defendant, Hope & Co., and demand then and there made for the payment thereof in the number of guilders specified in each coupon respectively, on the following dates: February 26, 1935, June 19, 1935, and July 9, 1935.

A photostatic copy of the exemplified demands and protests and exemplified sworn translations thereof are annexed to this affidavit, marked Exhibits E, F and G, respectively, and made a part hereof as if fully set forth herein.

In order to determine the market value in lawful money of the United States as of the respective due dates of the respective coupons owned by "Maatschappij", and as of the respective dates on which demand for payment and refusal of payment was made in Amsterdam, Holland, of the number of guilders to which the plaintiff "Maatschappij" is entitled in respect to the aforesaid coupons, I have examined the various pertinent issues of the Commercial & Financial Chronicle, a recognized financial publi- [fol. 70] cation, and find the following quotations in respect to the values of the guilder on the respective pertinent dates:

Date	Value
Nov. 1, 1934	67.6669 cents.
May 1, 1935	67.8164 cents.
Feb. 26, 1935	67.9192 cents.
June 19, 1935	67.8878 cents.
July 9, 1935	68.3257 cents.

Taking the lowest rate of exchange which prevailed during the entire period from November 1, 1934, through and including the date of the last protest (namely, the rate of 67.6669 cents per guilder), the market value of the 24,412.98 guilders due to plaintiff "Maatschappij" for unpaid coupons and protest fees, as above set forth (the subject of the Seventh, Eighth, Ninth and Tenth causes of action)

expressed in lawful money of the United States was and is not less than $16,519.50.

As to the coupons owned by "*Mondiale*": Plaintiff "Mondiale" was and now is the legal owner, holder and bearer of coupons as follows:

Due Date of Coupons	Number of Coupons	Amount of Guilders specified in each coupon	Total Number of Guilders represented thereby
Nov. 1, 1934	37	62.25	2,303.25
Nov. 1, 1934	16	31.13	498.08
May 1, 1935	57	62.25	3,548.25
May 1, 1935	20	31.13	622.60
Nov. 1, 1935	98	62.25	6,100.50
Nov. 1, 1935	22	31.13	684.86
May 1, 1936	64	62.25	3,984.00
May 1, 1936	12	31.13	373.56

[fol. 71] Plaintiff "Mondiale" also has a cause of action for 55.80 guilders representing protest fees and expenses consequent upon defendant's refusal to pay the aforesaid coupons on demand.

The various coupons above referred to belonging to "Mondiale" were presented for payment in Amsterdam, Holland, at the office or agency of the defendant, Hope & Co., and demand then and there made for the payment thereof in the number of guilders specified in each coupon respectively, on the following dates: June 18, 1935, April 1, 1936 and July 9, 1936.

A photostatic copy of the exemplified demands and protests and of exemplified sworn translations thereof are annexed to this affidavit, marked Exhibits H, I, J and K, respectively, and made a part hereof as if fully set forth herein.

In order to determine the market value in lawful money of the United States as of the respective due dates of the respective coupons owned by "Mondiale", and as of the respective dates on which demand for payment and refusal of payment was made in Amsterdam, Holland, of the number of guilders to which the plaintiff "Mondiale" is entitled in respect to the aforesaid coupons, I have examined the various pertinent issues of the Commercial & Financial Chronicle, a recognized financial publication, and find the following quotations in respect to the values of the guilder on the respective pertinent dates:

[fol. 72]

Date	Value
Nov. 1, 1934	67.6669 cents.
May 1, 1935	67.8164 cents.
June 18, 1935	67.9150 cents.
Nov. 1, 1935	67.9228 cents.
April 1, 1936	67.4985 cents.
May 1, 1936	67.8328 cents.
July 9, 1936	68.1164 cents.

Taking the lowest rate of exchange which prevailed during the entire period from November 1, 1934, through and including the date of the last protest (namely, the rate of 67.4985 cents per guilder), the market value of the 18,170.90 guilders due to plaintiff "Mondiale" for unpaid coupons and protest fees, as above set forth (the subject of the Twelfth, Thirteenth, Fourteenth, Fifteenth, Sixteenth, Seventeenth, Eighteenth, Nineteenth and Twentieth causes of action) expressed in lawful money of the United States was and is not less than $12,265.08.

As to the coupons owned by *"Hydropress"*: Plaintiff "Hydropress" was and now is the legal owner, holder and bearer of coupons as follows:

Due Date of Coupons	Number of Coupons	Amount of Guilders specified in each coupon	Total Number of Guilders represented thereby
May 1, 1935	8	62.25	498.00
May 1, 1935	4	31.13	124.52

Plaintiff "Hydropress" also has a cause of action for 14.80 guilders representing protest fees and expenses consequent upon defendant's refusal to pay the aforesaid coupons on demand.

[fol. 73] The various coupons above referred to belonging to "Hydropress" were presented for payment in Amsterdam, Holland, at the office or agency of the defendant, Hope & Co., and demand then and there made for the payment thereof in the number of guilders specified in each coupon respectively, on or about July 20, 1936.

A photostatic copy of the exemplified demands and protests and of exemplified sworn translations thereof are an-

nexed to the affidavit, marked Exhibit L, and made a part hereof as if fully set forth herein.

In order to determine the market value in lawful money of the United States as of the due date of the coupons owned by "Hydropress", and as of the date on which demand for payment and refusal of payment was made in Amsterdam, Holland, of the number of guilders to which the plaintiff "Hydropress" is entitled in respect to the aforesaid coupons, I have examined the various pertinent issues of the Commercial & Financial Chronicle, a recognized financial publication, and find the following quotations in respect to the values of the guilder on the respective pertinent dates:

Date	Value
May 1, 1935	67.8164 cents.
July 20, 1936	68.1075 cents.

Taking the lowest rate of exchange which prevailed during the entire period from May 1, 1935, through and including the date of the protest (namely, the rate of 67.8164 cents per guilder), the market value of the 637.32 guilders due to [fol. 74] plaintiff "Hydropress" for unpaid coupons and protest fees, as above set forth (the subject of the Twenty-first, Twenty-second and Twenty-third causes of action) expressed in lawful money of the United States was and is not less than $432.21.

As to all plaintiffs: Although plaintiffs believe that the right of election in respect of the coupons resides in the holder of the coupons, irrespective of who the holder of the bond may be, and that the ownership of the bonds is in any event immaterial, the fact is that the respective plaintiffs were, on the respective due dates of the several coupons sued upon, the owners of the bonds from which such respective coupons had been detached and that the respective plaintiffs are now, and at all times since the dates when said coupons respectively became due were, the owners respectively of a number of bonds sufficiently large in principal amount to have produced the number of coupons here sued upon. The numbers of the bonds owned by plaintiffs, however, may from time to time have changed due to the fact that said bonds are pledged as collateral in various brokerage accounts, and in connection with such pledges the brokers have received, and may have exercised, the right to use and deliver against sales made by others than the said plaintiffs,

bonds belonging to the plaintiffs, and to substitute in lieu of such bonds so used or delivered other bonds of an equal aggregate principal amount; such pledge, and such substitution of one bond of an equal principal amount for another bond of an equal principal amount, is in accordance with usage and custom both in New York City and in foreign countries.

[fol. 75] Articles 1308, 1309, 1310, 1311 and 1313 of the Dutch Civil Code provide that in cases of alternative obligations the debtor is absolved by the delivery of one of two things contained in the obligation, and that the choice belongs to the debtor unless it has been granted to the creditor; if, where the choice has been left to the creditor, one of the two things has perished or can no longer be delivered, the creditor is entitled to the other.

Prior to September 26, 1936, Holland was upon a bimetallic basis, and in addition it was and is provided by the Act of Parliament dated July 18, 1904 (Official Gazette No. 189) that the notes of the Netherlands Bank are legal tender in Holland. There has never existed an obligation on the Netherlands Bank to pay in gold coin such bank notes as are presented to it for payment.

According to Article 18 of the Banking Law of 1919 (State Papers No. 553 of 1918) the notes of the Netherlands Bank were made payable daily on demand, except on certain specified days mentioned in Article 154 of the Commercial Code, and except that payment at the agencies of the Netherlands Bank might be delayed until specie may have been received from the head office. These notes were provided to be payable by the Netherlands Bank, at its choice, either in gold coins of 10 and 5 guilders, or in silver coins of 2.50 guilders, 1 guilder and 50 cents for unlimited amounts, or in petty coin for limited amounts. It thus appears that the holder of guilders could not and cannot legally demand gold or gold coins exclusively in exchange therefor.

Prior to September 26, 1936, the Netherlands Bank was permitted to export gold, but on or about September 26, [fol. 76] 1936, by royal decree dated on that day, the export of gold coin and of gold bullion was prohibited, and said royal decree was confirmed by the Law of September 30, 1936 (Staatsblad No. 101).

As stated above, at all the respective times herein mentioned, and at all the respective times referred to in the amended complaint, the respective plaintiffs were the own-

ers, holders and bearers of the bonds to which the respective coupons referred to in this affidavit appertain; and at all of said respective times the respective plaintiffs were and at all times thereafter have been and now are ready, able and willing to deliver so-called "ownership certificates", although under no legal obligation to do so, and although such ownership certificates are not required of the plaintiffs, and although principal and interest of said bonds, as appears from Exhibit A attached to the amended complaint, are payable without deduction for any tax or taxes which the company may be required to pay thereon and to retain therefrom under any present or future law of the United States or of any state, county, municipality or other taxing authority therein. Although the coupons at bar are bearer coupons and negotiable instruments, defendant refused to pay them according to their terms upon presentation for payment at Amsterdam, Holland, unless the owner submitted with the coupons an affidavit to the effect, first, that said owner has been for the last six months a bona fide resident of a country other than the United States of America and, second, that the bonds to which the coupons are appurtenant have been since June 5, 1933, uninterruptedly [fol. 77] the property of bona fide residents of a country other than the United States of America. (The form of said affidavit is hereinafter discussed and, as hereinafter stated, a copy thereof is hereto attached as Exhibit N.)

There is no requirement in the coupons themselves (nor in the bonds from which they were detached, nor in the Indenture securing said bonds) compelling plaintiffs to make any such affidavits or statements, or any affidavits or statements whatsoever, or to submit any other proof of any nature whatsoever either with respect to residence or ownership or otherwise as a condition precedent to payment of the coupons.

The reasons for this attitude on the part of the defendant appear in the letters which Bethlehem Steel Corporation, sole stockholder of the defendant corporation, sent on behalf of defendant to the New York Stock Exchange under date of January 11, 1934 and August 7, 1934, respectively, copies of which are attached hereto as Exhibits M-1 and M-2, respectively, and made a part hereof as if herein set forth at length. Said letters appear in the Bulletins published by the New York Stock Exchange, dated January 13, 1934, and August 11, 1934, respectively.

In the letter of January 11, 1934, it appears that defendant took the position that Joint Resolution No. 10 of the 73rd Congress of the United States, adopted June 5, 1933, relieved defendant from its obligation to make payment in foreign countries in foreign currency to residents of the United States, but that it would make payment in such countries and in the currencies thereof in the amounts specified in the coupons to owners of such bonds residing in [fol. 78] foreign countries upon presentation and surrender of the coupons appurtenant thereto for the purpose. No condition, whether as to affidavits or ownership or of residence or otherwise, was imposed in the letter of January 11, 1934 as a condition precedent to payment, and no distinction is made between American citizens residing abroad and aliens.

However, in the letter dated August 7, 1934 it appeared that defendant had arbitrarily changed its position in respect of residents of foreign countries and imposed upon them the burden of submitting the affidavits and proofs above referred to, in order to enable owners of coupons (which were bearer instruments and passed by delivery) to receive payment thereon.

It seems that this changed attitude of defendant became effective in regard to the coupons maturing November 1, 1934 and subsequent thereto, although defendant did not apply the same to the coupons owned by residents of foreign countries maturing May 1, 1934, which were paid in accordance with the views expressed in the letter of January 11, 1934.

There are no substantial denials in the amended answer of any of the affirmative facts pleaded (except formal denial of failure, neglect or refusal to pay and formal denial of knowledge or information sufficient to form a belief as to the presentment, demand and protest); and the amended answer affirmatively admits that the respective amounts sued for have not been paid.

The coupons in suit will be physically produced in court upon the argument of this motion; the original exemplified [fol. 79] protests, copies of all of which are attached to this affidavit as exhibits, will likewise be physically produced in court upon the argument of this motion; thus, there remain no questions of fact to be determined by this Court.

In the amended answer defendant asserts in the first affirmative defense that all of the coupons sued upon were

on and after June 5, 1933 owned by persons resident in the United States, that the bonds to which the coupons referred to in the complaint were appurtenant were also so owned, and that the interests which the respective plaintiffs allege they have in said coupons were acquired by said plaintiffs respectively from residents of the United States on or shortly before the respective due dates of said coupons or thereafter, with full notice and knowledge of Joint Resolution No. 10 of the 73rd Congress, and that defendant is not obligated to pay the number of guilders expressed in the coupons to plaintiffs.

In its second affirmative defense, defendant asserts that if it was under any obligation upon maturity of the coupons to pay said coupons in guilders, it is only required to pay the number of guilders in respect to each coupon equivalent to $25 at the current rate of exchange on the maturity date. This defense is merely a corollary of the first defense.

In the third affirmative defense, defendant asserts that the respective holders of the bonds to which the coupons were appurtenant have not elected to receive payment of interest upon said bonds in guilders, and that the respective plaintiffs did not exercise their election to receive such payment until after the respective due dates of said coupons and that [fol. 80] thereby plaintiffs lost their right to receive payment otherwise than in money of the United States. This defense ignores the fact that the coupons upon their face express equal alternatives of payment, and that the coupons, as expressed in each separate foreign currency, are separate and distinct negotiable instruments payable not only in respect of United States money but also separately in respect of each and every of the foreign currencies specified and referred to in said coupons.

In the fourth affirmative defense, defendant makes the general allegation that if, notwithstanding that said coupons have not been presented for surrender and payment in the City of New York, defendant is liable here upon said coupons in any amount, defendant is not liable thereon in excess of the amount in lawful currency of the United States specified in said respective coupons.

In the fifth affirmative defense, defendant asserts that no so-called "ownership certificates" were filed in connection with the payment of the coupons, expressly ignoring the fact that defendant failed and refused to pay said coupons in guilders, and had made public announcement of its intention

so to fail and refuse to pay (except upon compliance with unauthorized conditions) long before the coupons were presented, and expressly further ignoring the fact that no affirmative duty is in any event cast upon plaintiffs to submit ownership certificates as a condition precedent to such payment, and notwithstanding the further fact that upon the presentation of the coupons defendant submitted to plaintiffs' representative forms of affidavit which it would re-
[fol. 81] quire plaintiffs to sign before any payment would be made in guilders in any event. The only penalty plaintiffs would suffer by failure to file ownership certificates would be that defendant would deduct and withhold the tax from any payment made.

A photostat of the form of affidavit submitted to plaintiffs' representative and which defendant required and now requires as a condition precedent to payment of the aforesaid coupons in the specified amount of guilders, is attached hereto, marked Exhibit N, and made a part hereof as if fully set forth herein.

Plaintiffs are unwilling to comply with defendant's unauthorized and self-imposed demands that plaintiffs execute and deliver to defendant any such affidavits; but plaintiffs (notwithstanding they were under no duty to do so) were at the time when said coupons were presented for payment in guilders in Amsterdam, Holland, ready, able and willing to deliver to defendant duly executed ownership certificates upon payment of the number of guilders specified in said coupons; and (notwithstanding they were under no duty to do so) plaintiffs at all times since have been and are now ready, able and willing to deliver to defendant duly executed ownership certificates upon proper payment of the proper amounts justly due to plaintiffs. There is nothing in the Revenue Acts of the United States or in the Rules or Regulations pursuant thereto, which imposes any duty upon plaintiffs to file or deliver so-called "ownership certificates", especially where, as here, actually failure to deliver the same is not the real ground of refusal and payment was actually refused upon other grounds.

[fol. 82] It is admitted by defendant that the provisions for alternative payment in specified and fixed amounts in foreign countries, in the respective currencies of those foreign countries, were inserted for the purpose of giving a wider market for these securities; it is a fact, also, that this issue of bonds was originally listed on the New York,

London and Amsterdam Stock Exchanges and that it is now listed only upon the London Stock Exchange, but is mainly traded in in Amsterdam. It is undoubtedly the fact, also, that bonds of this issue have been and are traded in by insurance companies for the purpose of covering insurance and re-insurance risks in the various currencies in which those insurance commitments obtained. But whatever the reason may have been, the coupons in clear and unmistakable terms state that they may be presented for payment in foreign countries for specific amounts in the currencies of those foreign countries, if the holders of the coupons present for payment there, and that defendant expressly stipulated in the coupons that they are payable in foreign currencies, in foreign countries, and in specified and fixed amounts of such foreign currencies.

No question is raised by the amended answer as to the validity of the coupons. Only questions of law are presented by the amended answer, the only real defense being that defendant claims that plaintiffs acquired the coupons in suit from United States residents with full notice and knowledge of the Joint Resolution of Congress, and that defendant therefore is prohibited or relieved from paying the said coupons in guilders.

The other defenses raised also create no issue of fact, being, in substance, that plaintiffs never demanded the pay- [fol. 83] ment in lawful money of the United States in the face dollar amount of the coupons (obviously a frivolous defense), since the dollar was only one of the separate and distinct alternatives in which plaintiffs could choose payment, and which, in fact, they did not choose; and that the plaintiffs did not file ownership certificates.

No issue of fact is raised by the amended answer. The amended answer contains no meritorious defense to plaintiffs' claims. Summary judgment should be granted to the plaintiffs and an order should be entered assessing the damages to which the plaintiffs are entitled, and in the meantime an order should be entered directing payment to plaintiffs of the amount defendant admits to be owing.

[Sworn to by Arpad Plesch on May 17, 1937.]

[Exhibits A to L inclusive omitted in printing pursuant to stipulation and order printed herein on pages 86 to 97.]

[fol. 84] EXHIBIT M-1 ANNEXED TO AFFIDAVIT OF ARPAD PLESCH

Letter Dated January 11, 1934, from Bethlehem Steel Corporation, as Published by the New York Stock Exchange in Bulletin of January 13, 1934

"Letter has been received from Bethlehem Steel Corporation in regard to payment of coupons upon the following issues:

(1) The First Lien & Refunding Mortgage 5% Bonds, Series A, of Bethlehem Steel Company, due May 1, 1942.

(2) The First Consolidated Mortgage 5% Bonds of Lackawanna Steel Company, assumed by Bethlehem Iron & Steel Corporation, due March 1, 1950.

This letter is quoted in full below:

'Referring to your letter of December 8th, 1933, inquiring as to the policy to be followed with respect to the payment of coupons on certain bond issues expressed to be payable in foreign currencies:

'There are two such issues of bonds issued or assumed by our subsidiary companies: (1) the First Lien and Refunding Mortgage 5% Bonds, Series A, of Bethlehem Steel Company, due May 1, 1942, and (3) the First Consolidated Mortgage 5% Bonds of Lackawanna Steel Company assumed by one of our subsidiaries, Bethlehem Iron and Steel Corporation, and due March 1, 1950.

'The subject of your inquiry is an important one, not only to us but to many other interests in this country, and on that [fol. 85] account we have been giving a great deal of consideration to it, which has caused our delay in writing you.

'The first thing we wish to have clearly understood is that Bethlehem intends fully to perform its obligations with respect to all its bonds. No one should get the contrary idea from the fact that we have not paid in foreign currencies coupons detached from bonds owned by residents of this country. The general question presented is: What are Bethlehem's obligations in respect of them? If, as we hereinafter indicate to be the case, Bethlehem is not legally bound to pay in foreign currencies any of the coupons from bonds owned in this country, then, of course, its officers can-

not properly authorize the payment thereof in such currencies.

'The apparent purpose of providing for payment of the interest on and the principal of such Bonds in foreign countries was to facilitate their sale and distribution in such countries by enabling residents of such countries who might purchase any of such Bonds to collect such interest and principal at the respective maturity dates in such countries and in the currencies of such countries in specified amounts. In accordance with such purpose, we made or will make provision whereby owners of such Bonds residing in foreign countries, upon presentation and surrender of the coupons appurtenant thereto for the purpose, have received or may receive payment thereof in such countries and in the currencies of such countries in the amount specified in such coupons for such countries.

'As regards the payment of the interest on such Bonds owned by those residing in the United States, we call your [fol. 86] attention to Public Resolution No. 10 of the Seventy-third Congress, approved June 5, 1933, which among other things in substance declares that every provision in any obligation payable in money of the United States which purports to give the obligee a right to require payment in gold or a particular kind of coin or currency of the United States or in an amount of money of the United States measured thereby is against public policy and provides that every such obligation (whether or not it contains any such provision) shall be discharged upon payment, dollar for dollar, in any coin or currency which at the time of payment is legal tender for public and private debts.

'Assuming this Resolution to be applicable to the above-mentioned Bonds, we must regard it as binding upon and the public policy thereby declared applicable to, all residents of the United States, including this Company.

'Accordingly, we have paid and shall continue to pay, in accordance with their terms, matured coupons from the above-mentioned Bonds, owned by residents of the United States in lawful money of the United States upon presentation and surrender of such coupons at the office of Bethlehem, 25 Broadway, New York City; but the above-mentioned Resolution continuing in effect, we shall deem it our duty to decline to make payment in foreign countries of such coupons to residents of the United States in gold or in any

foreign currency, unless and until it has been finally determined that we are justified in making such payment.' "

[fol. 87] EXHIBIT M-2, ANNEXED TO AFFIDAVIT OF ARPAD PLESCH

Letter Dated August 7, 1934 from Bethlehem Steel Corporation as Published by the New York Stock Exchange in Bulletin of August 11, 1934

The following letter has been received from the Bethlehem Steel Corporation under date of August 7, 1934:

'Referring to my letter to you of January 11, 1934, regarding the payment in foreign countries of coupons for interest on the First Lien and Refunding Mortgage 5% Bonds, Series A, of Bethlehem Steel Company, due May 1, 1942, and the First Consolidated Mortgage 5% Bonds of Lackawanna Steel Company assumed by Bethlehem Iron and Steel Corporation and due March 1, 1950:

'I am writing to advise you that the respective paying agents for such bonds in the respective foreign countries in which such bonds and the coupons appurtenant thereto are expressed to be payable are being authorized to make payment of such coupons in the currencies of such countries in the respective amounts stated in such coupons when and as such coupons shall be surrendered to such agents for payment in accordance with their terms, but only if such coupons shall be accompanied by

(1) An affidavit signed and sworn to by the owner of the bond or bonds from which such coupons were detached or by a duly authorized representative of such owner on a date not more than twenty days prior to the date on which such coupons shall be so surrendered and showing:

[fol. 88] (a) The number or numbers of the bond or bonds from which such coupons were detached;

(b) The name of the owner of such bond or bonds;

(c) That such owner is at the date of the making of such affidavit, and has been continuously for a period of six months prior to said date, a bona fide resident of a country or countries other than the United States of America; and

(d) That the bond or bonds from which such coupons were detached has or have been owned by a bona fide resi-

dent or bona fide residents of a country or countries other than the United States of America continuously since June 5, 1933; and

(2) In the case of a non-resident alien of the United States of America, United States Treasury Department Ownership Certificate Form No. 1001 (green) duly filled in and signed by such owner, or, in the case of a national of the United States of America resident of a country other than the United States of America, United States Treasury Department Ownership Certificate Form No. 1000 (White) duly filled in and signed by such owner.

'As I pointed out in my letter to you of January 11, 1934, we wish to have it clearly understood that Bethlehem intends fully to perform its obligations with respect to all of its bonds. So long, however, as Joint Resolution No. 10 of the [fol. 89] 73rd Congress, approved June 5, 1933, shall continue in effect, we shall deem it our duty to decline to make payment in foreign countries, in gold or in any foreign currency of coupons from the above-mentioned bonds which were owned by residents of the United States on the date of the approval of such Joint Resolution, unless and until it shall have been finally determined that we are justified in making such payment.

Wm. J. Brown, Treasurer.'"

(Here follows 1 photograph, side folio 90.)

EXHIBIT "N", ANNEXED TO AFFIDAVIT OF ARPAD PLESCH

To BETHLEHEM STEEL COMPANY,
Cunard Building.
New York, N. Y.

Dear Sirs,
Mijne Heeren,

I (We) do solemnly declare:
Ik (Wij) verklaar (verklaren) hierbij plechtig:

that I (we) am (are) the owner(s) of:
dat ik (wij) eigenaar(s) ben (zijn) van:

$.....BETHLEHEM STEEL COMPANY, FIRST LIEN AND REFUNDING MORTGAGE 5% BONDS

NRS. .....

.....

from which the accompanying coupons due.....19....., tendered herewith for
waarvan de coupon(s) vervallen.....19....., welke ik (wij) hierbij

payment, have been detached;
ter betaling aanbied(en), afkomstig zijn;

that I (we) am (are) at this date, and I (we) have been continuously for a period of six
dat ik (wij) thans een bona fide ingezetene van een ander land of landen dan de Vereenigde

months prior to this date, a bona fide resident of a country or countries other than the United States of America;
Staten van Amerika ben (zijn) en dit onafgebroken gedurende de laatste 6 maanden ben (zijn) geweest;

that the bond or bonds from which this (these) coupon(s) was (were) detached has or have been
dat de obligatie(s) waarvan deze coupon(s) afkomstig is (zijn) sedert 5 Juni 1933 onafgebroken het

owned by a bona fide resident or bona fide residents of a country or countries other than the United
eigendom is (zijn) geweest van een bona fide ingezetene van een ander land of landen dan de Vereenigde

States of America continuously since June 5, 1933;
Staten van Amerika;

that my (our) permanent residence is at;
dat mijn (onze) vaste woonplaats is;

.....

..... 193...

I (We) hereby certify that the statements
Ik (Wij) verklaar (verklaren) hierbij de
contained in the foregoing declaration
juistheid van bovenstaande verklaring te
are correct.
bevestigen.

SIGNATURE OF OWNER OF BONDS.
Handteekening van den eigenaar van de Obligaties.

.....193...

(SIGNATURE OF BANKER, BROKER OR NOTARY PUBLIC)
(Handteekening van een Bankier, Commissionnair in
Effecten of Notaris)

604

[fol. 91] IN SUPREME COURT OF NEW YORK, COUNTY OF NEW YORK

AFFIDAVIT OF GEORGE LE BLANC, READ IN SUPPORT OF MOTION

STATE OF NEW YORK,
County of New York, ss:

George L. Le Blanc, being duly sworn, deposes and says:

I am an advisor in currency matters, including foreign exchange, with offices at 44 Wall Street, in the City of New York.

From 1912 to 1914 I was Manager of the Foreign Department of the American Express Company in New York From 1914 to 1929 I was Manager, and from 1916 to 1929 I was Vice-President of the Foreign Department of the Equitable Trust Company of New York, which conducted one of the largest businesses in foreign exchange in the world. From 1920 to 1929 I was President of the Equitable Eastern Banking Corporation of New York. From 1929 to 1930 I was President of the Interstate Trust Company of New York. From 1930 to the present as an advisor in matters of currency and foreign exchange, I have at all times been interested in and concerned with the money markets of the world and various currency fluctuations in them.

I have had wide experience trading in foreign exchange, and have bought and sold foreign currencies. During my [fol. 92] entire connection with the business of foreign exchange I have been and am familiar with the prices generally at which Dutch guilders have sold in New York. As part of my work, I have been and am familiar with dollar prices generally in world markets and I have been and am familiar with the prices at which the dollar has sold in Amsterdam, Holland.

I have seen a copy of the following cable sent to Amsterdamsche Bank at Amsterdam by Harry Hoffman, the attorney for the plaintiffs in this action:

"PLEASE ADVISE DEFERRED CABLE HIGH AND LOW FOR UNITED STATES DOLLARS IN AMSTERDAM ON NOVEMBER FIRST 1934 FEBRUARY TWENTY-SIXTH MAY FIRST JUNE EIGHTEENTH JUNE NINETEENTH JULY NINTH NOVEMBER FIRST 1935 APRIL FIRST APRIL SEVENTEENTH

MAY FIRST JULY SECOND JULY NINTH JULY TWENTIETH 1936 ADDRESS 30 PINE STREET NEWYORK"

I have also seen the following cable received from the Amsterdamsche Bank at Amsterdam in reply to the above cable:

"YOURS EIGHTH NOVEMBER FIRST 1934 14781 14767 FEBRUARY TWENTY-SIXTH 14750 14712 MAY FIRST 14775 14712 JUNE EIGHTEENTH 14750 14725 JUNE NINETEENTH 14737 14718 JULY NINTH 14667 14631 NOVEMBER FIRST 1935 14737 14712 APRIL FIRST 14737 14700 APRIL SEVENTEENTH 14743 14725 [fol. 93] MAY FIRST 14750 14737 JULY SECOND 14681 14656 JULY NINTH 14687 14667 JULY TWENTIETH 1936 14687 14667 WITHOUT RESPONSIBILITY"

This cable contains the following quotations of United States dollars in terms of guilders in Amsterdam, on the dates stated:

Date	Guilders per dollar		Equals Cents per Guilder	
	High	Low	High	Low
November 1, 1934	1.4781	1.4767	67.972	67.654
February 26, 1935	1.4750	1.4712	67.972	67.797
May 1, 1935	1.4775	1.4712	67.972	67.682
June 18, 1935	1.4750	1.4725	67.912	67.797
June 19, 1935	1.4737	1.4718	67.944	67.856
July 9, 1935	1.4667	1.4631	68.348	68.180
November 1, 1935	1.4737	1.4712	67.972	67.856
April 1, 1936	1.4737	1.4700	68.027	67.856
April 17, 1936	1.4743	1.4725	67.912	67.829
May 1, 1936	1.4750	1.4737	67.856	67.797
July 2, 1936	1.4681	1.4656	68.231	68.115
July 9, 1936	1.4687	1.4667	68.180	68.087
July 20, 1936	1.4687	1.4667	68.180	68.087

The above cabled quotations are from a large Amsterdam bank. Such quotations are relied upon by dealers in foreign exchange as accurate. On the basis of the above quotations, and on the basis of my past experience trading in foreign exchange as well as my experience as an advisor in currency matters, and in the light of my knowledge of the value of the dollar in Amsterdam, Holland, I conclude and it is my

opinion that the above quotations represent the true value of the dollar in terms of guilders at Amsterdam, on the dates mentioned.

(Sworn to by George L. Le Blanc on September 9, 1937.)

[fol. 94] IN SUPREME COURT OF NEW YORK, COUNTY OF NEW YORK

AFFIDAVIT OF VICTOR OSIAS, READ IN SUPPORT OF MOTION

STATE OF NEW YORK,
County of New York, ss:

Victor Osias, being duly sworn, deposes and says:

I am employed by Sutro Bros. & Co. as clerk and am familiar with the account of Anglo-Continentale Treuhand, A. G.

From September 12, 1933, to and including August 7, 1934, Anglo-Continentale Treuhand, A. G. purchased through Sutro Bros. & Co. a total of 350 bonds known as Bethlehem Steel Corporation First Lien & Refunding Mortgage, Series A, 5% Bonds, Due May 1, 1942; the par principal amount of each of said bonds as expressed in United States currency is $1,000; as expressed in Dutch guilders, is 2490 guilders; and as expressed in English pounds is £205.15.3. sterling.

The dates of purchase, and the number of bonds so purchased, as disclosed by said records, are as follows:

Date	Number of Bonds
September 12, 1933	2
" 15, 1933	12
" 18, 1933	8
" 19, 1933	15

[fol. 95]

September 20, 1933	5
" 22, 1933	5
" 25, 1933	25
" 26, 1933	4

Date		Number of Bonds
October	3, 1933	17
"	4, 1933	5
"	23, 1933	3
"	31, 1933	1
November	3, 1933	1
"	9, 1933	4
"	10, 1933	2
"	22, 1933	1
"	27, 1933	1
December	4, 1933	1
"	20, 1933	7
"	21, 1933	5
"	22, 1933	2
"	26, 1933	3
"	27, 1933	2
"	28, 1933	3
January	4, 1934	3
"	2, 1934	2
"	25, 1934	1
"	26, 1934	3
"	29, 1934	10
"	30, 1934	5
"	31, 1934	5
February	7, 1934	10
"	9, 1934	10
"	13, 1934	25
"	14, 1934	10
"	15, 1934	7
"	15, 1934	3
"	20, 1934	17
March	5, 1934	3
"	7, 1934	1
"	9, 1934	1
"	12, 1934	8
"	13, 1934	5
"	20, 1934	10
"	23, 1934	5
[fol. 96]		
April	10, 1934	6
"	11, 1934	4
"	24, 1934	10
"	30, 1934	15

Date	Number of Bonds
May 21, 1934	1
" 22, 1934	20
" 23, 1934	1
" 24, 1934	1
" 25, 1934	1
" 28, 1934	1
" 29, 1934	1
June 1, 1934	2
" 4, 1934	1
" 5, 1934	4
" 6, 1934	3
" 15, 1934	1

Of said bonds, 139 thereof were purchased prior to January 7, 1934, and 211 thereof were purchased between January 7, 1934, and August 11, 1934.

Sales of said bonds during said period were as follows:

Date	Number of Bonds
October 4, 1933	5
March 14, 1934	1
May 18, 1934	21

(Sworn to by Victor Osias on September 9, 1937.)

[fol. 97] In Supreme Court of New York, County of New York

Affidavit of Charles J. McKenna, Read in Support of Motion

State of New York,
County of New York, ss:

Charles J. McKenna, being duly sworn, deposes and says:

I am employed by Redmond & Company as Cashier and and familiar with the account of Mondiale Handels-Und Verwaltungs, A. G.

From September 18, 1933, to and including August 7, 1934, Mondiale Handels-Und Verwaltungs, A. G. purchased

through Redmond & Company a total of 27 bonds known as Bethlehem Steel Corporation First Lien & Refunding Mortgage, Series A, 5% Bonds, Due May 1, 1942; the par principal amount of each of said bonds as expressed in United States currency is $1,000; as expressed in Dutch guilders, is 2490 guilders; and as expressed in English pounds is £205.15.3 sterling.

The dates of purchase, and the number of bonds so purchased, as disclosed by said records, are as follows:

Date	Number of Bonds
September 18, 1933	2
October 11, 1933	1
October 16, 1933	2
[fol. 98] November 24, 1933	1
November 29, 1933	4
April 18, 1934	5
July 31, 1934	7
August 1, 1934	5

17 of said bonds were purchased between January 7, 1934 and August 11, 1934.

During said period there were no sales of said bonds through Redmond & Company by Mondiale Handels-Und Verwaltungs, A. G.

(Sworn to by Charles J. McKenna on September 9, 1937.)

In Supreme Court of New York, County of New York

Affidavit of Edwin R. Williams, Read in Support of Motion

State of New York,
County of New York, ss:

Edwin R. Williams, being duly sworn, deposes and says:

I am an Assistant Cashier of The Chase National Bank of the City of New York and am familiar with the account [fol. 99] of Anglo-Continentale Treuhand, A. G., Eschen, Liechtenstein, and also with the account of Anglo-Continentale Trust Maatschappij, Rotterdam, Holland.

The records of The Chase National Bank of the City of New York show that said bank is holding for the said Anglo-Continentale Treuhand, A. G., Eschen, Liechtenstein, certain bonds known as Bethlehem Steel Corporation First Lien & Refunding Mortgage, Series A, 5% Bonds, Due May 1, 1942, with November 1, 1937 and subsequent coupons attached.

The par principal amount of said bonds as expressed in United States dollars is $325,500; as expressed in Dutch guilders is 810,495. guilders; and as expressed in English pounds is £66,975-12-8.

Furthermore, the Chase National Bank, London, England, was holding as of August 17, 1937 and is still holding for account of Anglo-Continentale Trust Maatschappij, Rotterdam, Holland, certain of the aforesaid bonds of the par principal amount, as expressed in United States dollars, of $95,000, or, as expressed in Dutch guilders, 236,550. guilders, or, as expressed in English pounds, £19,547-8-8, which latter bonds are held by us in our trust department.

(Sworn to by Edwin R. Williams on September 9, 1937.)

[fol. 100] IN SUPREME COURT OF NEW YORK, COUNTY OF NEW YORK

AFFIDAVIT OF CLEVELAND COBB, READ IN SUPPORT OF MOTION

STATE OF NEW YORK,
County of New York, ss:

Cleveland Cobb, being duly sworn, deposes and says:

I am an Assistant Secretary of The New York Trust Company. The said The New York Trust Company is holding for account of Pierson & Co., Amsterdam, Holland, certain bonds known as Bethlehem Steel Corporation First Lien & Refunding Mortgage, Series A, 5% Bonds, Due May 1, 1942, with November 1, 1937 and subsequent coupons attached.

The par principal amount of said bonds as expressed in United States dollars is $113,000; as expressed in Dutch guilders is 281,370 guilders; and as expressed in English pounds is £23,251.3.3.

(Sworn to by Cleveland Cobb on September 8, 1937.)

[fol. 101] IN SUPREME COURT OF NEW YORK, COUNTY OF NEW YORK

AFFIDAVIT OF HARRY HOFFMAN, READ IN SUPPORT OF MOTION

STATE OF NEW YORK,
County of New York, ss:

Harry Hoffman, being duly sworn, deposes and says:

This supplemental affidavit is made in support of plaintiffs' motion fo. summary judgment herein.

I am in receipt of a cable from Arpad Plesch, the Managing Director of each of the plaintiffs herein, a copy of which is attached to this affidavit, marked Exhibit A, and made a part hereof as if herein fully set forth at length.

The reason why this affidavit is made at this time is that the matter referred to therein is suggested by defendant's brief; and the reason this affidavit is made by me and not by plaintiffs is that plaintiffs are foreign corporations, and have no office for the transaction of business within the United States; there is no officer or agent of plaintiffs within the United States and there is not sufficient time to prepare and forward an affidavit to the said Arpad Plesch in time to receive the return thereof upon the argument of this motion.

[fol. 102] I am also in receipt of the following cable from Pierson & Co., of Amsterdam, Holland:

[RCA RADIOGRAM]

"37 SEPT 8 AM 6 53
D 311

"PCT/SE HLK354

AMSTERDAM 11 8 12480

LC HOFFATTY NYK

HOLDING ACCOUNT MONDIALE 113000 BETH-STEELBONDS DEPOSITED NYTRUSTCO

PIERSONCO"

(Sworn to by Harry Hoffman on September 8, 1937.)

EXHIBIT "A", ANNEXED TO AFFIDAVIT OF HARRY HOFFMAN

[COMMERCIAL CABLES]

DEL2144 SEP 837

PC121 LIDOEXCELSIORPO 176 FST 50 8 1900
NLT HOFFATTY NYK /

FOR USE ON MOTION BEFORE JUSTICE HOFSTADTER I SUPERVISED BETHSTEEL PURCHASES ACCOUNT ALL PLAINTIFFS STOP FOR CONVENIENCE AND INTERCORPORATE FINANCING PUR-
[fol. 103] CHASES SOMETIMES MADE IN NAME OF ONE PLAINTIFF AS AGENT AND BROKER FOR ANOTHER STOP MONDIALE AND HYDROPRESS HAVE PLEDGED AND DEPOSITED BONDS WITH TREUHAND AND MAATSCHAPPIJ WHICH IN TURN REPLEDGED AND DEPOSITED SAME ALSO PLEDGING AND DEPOSITING THEIR OWN BONDS STOP PRINCIPAL PURCHASES WERE PRIOR TO AUGUST 1934 STOP AS FIRST LETTER BY BETHLEHEM IN JANUARY 1934 ANNOUNCED UNCONDITIONAL PAYMENT TO FOREIGN HOLDERS AND CONDITIONS WERE FIRST IMPOSED BY BETHLEHEM ONLY IN AUGUST 1934 OBVIOUSLY THOSE PURCHASES COULD NOT HAVE BEEN AND WERE NOT MADE BY PLAINTIFFS WITH INTENT EVADE JOINT RESOLUTION SINCE UNTIL THAT DATE BETHLEHEM CONCEDES ITS INAPPLICABILITY STOP PURCHASES BETWEEN JANUARY AND AUGUST WERE MADE IN RELIANCE ON JANUARY LETTER STOP ALTHOUGH I CONSIDER JOINT RESOLUTION INAPPLICABLE TO ANY PURCHASES WHETHER BEFORE OR AFTER AUGUST 1934 NEVERTHELESS NO INTENT EVADE JOINT RESOLUTION EVEN ON ANY PURCHASES ALL BEING MADE TO PROTECT OBLIGATIONS IN CURRENCIES OTHER THAN DOLLARS

ARPAD PLESCH.

[fol. 104] In Supreme Court of New York, County of New York

Affidavit of William J. Brown, Read in Opposition to Motion

State of New York,
County of New York, ss:

William J. Brown, being duly sworn, deposes and says:

I am the Assistant Treasurer of the defendant Bethlehem Steel Company and am familiar with the financial affairs and records of the defendant.

The coupons upon which suit has been instituted are coupons that were detached respectively from coupon bonds of the defendant known as its First Lien and Refunding Mortgage Five Per Cent. Thirty-Year Gold Bonds, Series A, due May 1, 1942, which are hereinafter referred to as the First Lien and Refunding Bonds.

Said coupon Bonds are a part of an issue of the First Lien and Refunding Bonds of the face amount of $15,200,000 that were issued in 1912 to retire $6,428,000, face amount, of the Five-Year Six Per Cent. Sinking Fund Secured Gold Notes of the defendant, to provide funds for the acquisition of $2,668,000, face amount, of the First Extension Mortgage Five Per Cent. Gold Bonds of the defendant and to provide additional working capital. Said $15,200,000, face amount, of the First Lien and Refunding Bonds were a part of an [fol. 105] authorized issue of $50,000,000, face amount, thereof and were sold in the spring of 1912 by the defendant to Bethlehem Steel Corporation, a New Jersey corporation, and by the latter to a group of bankers. In the case of each sale said Bonds were sold for, and paid for, in United States dollars, and the sole consideration received by the defendant and by Bethlehem Steel Corporation for said Bonds was paid in United States dollars.

Said $15,200,000, face amount, of First Lien and Refunding Bonds so sold by the defendant and said Bethlehem Steel Corporation were offered to the public by the bankers on or about May 20, 1912, at 91½% of their principal amount in dollars, plus accrued interest. In offering said Bonds to the public, the bankers mailed or otherwise issued to prospective purchasers a letter wherewith they enclosed a cir-

cular describing said Bonds and a form of subscription for said Bonds. A photostatic copy of the letter, circular and form of subscription so mailed or otherwise issued by William Salomon & Co., who headed the banking group in the United States, to its prospective purchasers is attached hereto marked Exhibit A and hereby made a part hereof. Upon information and belief, similar letters and copies of the same circular were mailed or otherwise issued to prospective purchasers by others of the banking group in the United States, and said circular was published in the New York Evening Post on May 21, 1912, in the Wall Street Journal on May 21, 1912, and in the New York Evening Mail on May 22, 1912.

None of said letters nor said circular made any reference whatsoever to the payment of the said Bonds or of the [fol. 106] coupons attached thereto in anything except dollars, but, on the contrary, they expressly stated that the coupon Bonds of said issue were to be of the denominations of $1,000 and $500. Furthermore, the form of subscription bound the purchaser to take, not a given number of said Bonds, but a given face amount thereof expressed in dollars.

At the same time at which said $15,200,000 face amount of the First Lien and Refunding Bonds were being offered for sale in the United States by New York bankers, simultaneous but entirely separate and distinct offerings were being made in London by Messrs. Salomon & Co. and in Amsterdam by Messrs. Hope & Co. A photostatic copy of the circular issued by Hope & Co. in Amsterdam, together with a translation thereof, is attached hereto, marked Exhibit B and hereby made a part hereof.

The plants and properties of the defendant are located in the United States and the defendant is not engaged in business outside of the United States and does not in the normal course of its business have guilders available in Amsterdam or pounds available in London with which to pay the coupons of said bonds.

The affidavit of Arpad Plesch in support of the motion for summary judgment does not deny the allegation in paragraph 63 of the amended answer that no "ownership certificates" were filed in respect of the bonds and coupons referred to in this action. It appears from Exhibits A to L annexed to plaintiff's motion papers on this motion that, with respect to each demand for payment of coupons Hope [fol. 107] & Co. declined payment upon the grounds, among

others, that the coupons were not accompanied by American ownership certificates.

Regulation 77 of the United States Treasury Department, Bureau of Internal Revenue, approved by the Secretary of the Treasury on February 10, 1933, and in effect until February 11, 1935, provided as follows with respect to ownership certificates:

"Art. 765. *Ownership certificates for bond interest.*—The owners (except domestic and resident foreign corporations) of bonds or other obligations containing a tax-free covenant, issued by a domestic corporation, a resident foreign corporation, or a nonresident foreign corporation having a fiscal agent or a paying agent in the United States, when presenting interest coupons for payment shall file an ownership certificate for each issue of bonds, showing the name and address of the debtor corporation, the name and address of the owner of the bonds, a description of the obligations, the amount of interest and its due date, the rate at which tax is to be withheld, and the date upon which the interest coupons were presented for payment. However, ownership certificates need not be filed by a non-resident alien, a partnership composed in whole of nonresident aliens, or a nonresident foreign corporation in connection with interest payments on such bonds were similar obligations of a domestic or resident foreign corporation qualifying under section 119(a)(1)(B) or of a nonresident foreign corporation. In [fol. 108] case of interest on corporate bonds or similar obligations not containing a tax-free covenant, issued by a domestic or resident foreign corporation, other than a corporation, qualifying under section 119(a) (1) (B), ownership certificates are required if the owner of such bonds is a nonresident alien, a nonresident partnership composed in whole or in part of nonresident aliens, or a nonresident foreign corporation. Ownership certificates are required in the case of such bonds, whether or not containing a tax-free covenant, if the owner is unknown to the withholding agent. * * *

"When interest coupons detached from corporate bonds are received unaccompanied by ownership certificates, unless the owner of the bonds is known to the first bank to which the coupons are presented for payment, and the bank is satisfied that the owner is a person who is not required to file an ownership certificate, the bank shall require of the payee a statement showing the name and address of the per-

son from whom the coupons were received by the payee, and alleging that the owner of the bonds is unknown to the payee. Such statement shall be forwarded to the Commissioner with the monthly return on Form 1012. The bank shall also require the payee to prepare a certificate on Form 1001 crossing out 'owner' and inserting 'payee' and entering the amount of the interest on line 3, and shall stamp or write across the face of the certificate 'statement furnished,' adding the name of the bank.

* * * * * * *

[fol. 109] "Art. 767. *Form of certificate for nonresident aliens, nonresident foreign corporations, and unknown owners.*—For the purpose of article 765, Form 1001 shall be used in connection with interest payments on bonds, regardless of whether or not such bonds contain a tax-free covenant, (a) by nonresident aliens (individual or fiduciary), (b) by nonresident partnerships composed in whole or in part of nonresident aliens, (c) by nonresident foreign corporations, and (d) where the owner is unknown."

Regulations 86 of the United States Treasury Department, Bureau of Internal Revenue, which were approved by the Secretary of the Treasury on February 11, 1935 (prior to the earliest presentment of coupons in this case) provide as follows with respect to ownership certificates:

"Art. 143-5. *Ownership certificates for bond interest.*—In accordance with the provisions of section 147. (b), citizens and resident individuals and fiduciaries, resident partnerships and nonresident partnerships all of the members of which are citizens or residents, owning bonds, mortgages, or deeds of trust, or other similar obligations issued by a domestic corporation, a resident foreign corporation, or a nonresident foreign corporation having a fiscal agent or a paying agent in the United States, when presenting interest coupons for payment shall file ownership certificates for each issue of such obligations regardless of the amount of the coupons.

[fol. 110] "In the case of interest payments on overdue coupon bonds, the interest coupons of which have been exhausted, ownership certificates are required to be filed when collecting the interest in the same manner as if interest coupons were presented for collection.

"In all cases where the owner of bonds, mortgages, or deeds of trust, or other similar obligations of a corporation is a nonresident alien (individual or fiduciary), nonresident partnership composed in whole or in part of nonresident aliens, nonresident foreign corporation, or where the owner is unknown, an ownership certificate for each issue of such obligations shall be filed when interest coupons for any amount are presented for payment. The ownership certificate is required whether or not the obligation contains a tax-free covenant. However, ownership certificates need not be filed by a nonresident alien, a partnership composed in whole of nonresident aliens, or a nonresident foreign corporation in connection with interest payments on such bonds, mortgages, or deeds of trust or other similar obligations of a domestic or resident foreign corporation qualifying under section 119 (a) (1) (B), or of a nonresident foreign corporation.

"The ownership certificate shall show the name and address of the debtor corporation, the name and address of the owner of the obligations, a description of the obligations, the amount of interest and its due date, the rate at which tax is to be withheld, and the date upon which the [fol. 111] interest coupons were presented for payment.

* * * * * * *

"When interest coupons detached from corporate bonds are received unaccompanied by ownership certificates, unless the owner of the bonds is known to the first bank to which the coupons are presented for payment, and the bank is satisfied that the owner is a person who is not required to file an ownership certificate, the bank shall require of the payee a statement showing the name and address of the person from whom the coupons were received by the payee, and alleging that the owner of the bonds is unknown to the payee. Such statement shall be forwarded to the Commissioner with the monthly return on Form 1012. The bank shall also require the payee to prepare a certificate on Form 1001, crossing out 'owner' and inserting 'payee' and entering the amount of the interest on line 3, and shall stamp or write across the face of the certificate 'Statement furnished,' adding the name of the bank.

* * * * * * *

'ART. 143—7. *Form of certificate for nonresident aliens, nonresident foreign corporations and unknown owners.*— For the purpose of article 143—5, Form 1001 shall be used in preparing ownership certificates (a) of nonresident aliens (individual or fiduciary), (b) of nonresident partnerships composed in whole or in part of nonresident aliens, (c) of nonresident foreign corporations, and (d) where the owner is unknown."

[fol. 112] The same provisions, with certain immaterial changes, were included in Articles 143—4 and 143—6 of Regulations 94 (approved by the Acting Secretary of the Treasury November 12, 1936). Upon information and belief, each of the plaintiffs in this action has at all times since January 1, 1934, been a non-resident foreign corporation within the meaning of Regulations 77, 86 and 94 and defendant had been a domestic corporation not qualified under Section 119(a) (1) (B) of the Revenue Act of 1932 or 1934.

A copy of Form 1001, referred to in the above Regulations and prescribed by the Treasury Department for use at all times between July, 1934, and July, 1936, and a copy of Form 1001 as revised in July, 1936, are annexed hereto as Exhibits C and D, respectively, and made a part hereof.

(Sworn to by Wm. J. Brown on May 22, 1937.)

[fol. 113] EXHIBIT "A" ANNEXED TO AFFIDAVIT OF WM. J. BROWN

William Salomon & Co.,
Bankers,
25 Broad Street New York
Chicago, 105 So. La Salle Street
Cable Address, Wilsal
Lieber's Code Used

May 20, 1912.

New Issue

$15,200,000 Bethlehem Steel Co. First & Refunding Mortgage 5% Bonds to Yield about 5.60%.

DEAR SIR:

With associates we are offering for public subscription at 91½ and accrued interest the above bonds, of which the

majority has already been sold. Subscription lists will be opened on Thursday, May 23, at 10 a. m. and closed at 3 p. m., or earlier on the same day. For additional details of the offering and a brief description of the bonds we refer you to the enclosed circular.

In offering these bonds we would emphasize the substantial progress of the Bethlehem Steel Co. under the present management. In the last six years the gross business has more than doubled according to official statements, being reported in 1905 at $14,554,117 and in 1911 at $30,093,022. The prosperity of the company at the present time is attested by its report of orders booked during the first quarter [fol. 114] of 1912, aggregating about $12,250,000, or at the rate of nearly $50,000,000 per annum.

A simultaneous offering will be made abroad in London, England, by Messrs. Salomon & Co., and in Amsterdam, Holland, by Messrs. Hope & Co., thus assuring an international market. In this country subscriptions will be received in the principal financial centres by well-known houses. In Pennsylvania the bonds have the advantage of being tax-exempt, which is an important feature in that market.

In view of the large amount already sold, as above stated, we would suggest that subscriptions be telegraphed by intending subscribers whose applications cannot be mailed in time to be in our hands Thursday morning.

Yours truly, William Salomon & Co.

Li.A.
Enclosure.

[fol. 115] ——, 1912.

Messrs. William Salomon & Co., 25 Broad Street, New York.

GENTLEMEN:

I

We herewith subscribe for $— face amount Bethlehem Steel Company First Lien and Refunding Mortgage 5% Thirty Year Gold Bonds in accordance with the terms of your prospectus dated May 21st, 1912.

Yours truly,

Signature, ...

Name in full, ...

Address in full, ...

[fol. 116]

William Salomon & Co.

Bankers

25 Broad Street, New York

Chicago, 105 So. La Salle Street

Cable Address, Wilsal

Lieber's Code Used

$15,200,000

Bethlehem Steel Company

First Lien and Refunding Mortgage Five per Cent Thirty Year Gold Bonds

Principal and Interest Guaranteed by Endorsement on Each Bond by Bethlehem Steel Corporation

Principal Payable May 1, 1942

Interest Payable May 1 and November 1

Coupon Bonds of $1,000 and $500 Denominations with Full Privileges of Registration

Coupon and Registered Bonds Interchangeable

Annual Sinking Fund of 2½ per Cent of the Face Value of Bonds of this Issue Outstanding With Minimum Sinking Fund Limit of $300,000 per Year

All or any part of the issue redeemable at the option of the Company at 105% and accrued interest on any interest date upon twelve weeks' notice.

Equitable Trust Company of New York, Trustee

Free of Tax in Pennsylvania

Attention is directed to the within summary, prepared by Mr. C. M. Schwab, President of Bethlehem Steel Corporation, of his more detailed letter, dated May 8, 1912, de-
[fol. 117] scribing this issue of bonds. Copies of detailed letter will be furnished on request.

Application will be made to list this issue on the New York Stock Exchange and, if deemed desirable, on one or more Foreign Exchanges.

Temporary Certificates, exchangeable later for Engraved Bonds, are now ready for delivery.

The form of bonds, the creation of the mortgage and all legal proceedings connected therewith are to be approved by our counsel, Messrs. Simpson, Thacher & Bartlett.

Having placed a large amount of this issue here and in Europe, we will receive subscriptions for the unsold balance, at 91½ and Accrued Interest.

The subscription will be opened on Thursday, May 23rd, 1912, at 10 o'clock A. M. and closed at 3 o'clock P. M. the same day or earlier at the option of the undersigned. The right is reserved to reject any application and to allot a smaller amount than applied for. Payment in full to be made upon allotment. Subscription blanks may be obtained from the undersigned.

A simultaneous issue will be made by Messrs. Salomon & Co., London, and by Messrs. Hope & Co., Amersterdam, Holland.

Hallgarten & Co.,
5 Nassau Street,
New York.

Harvey Fisk & Sons,
62 Cedar Street,
New York.

William Salomon & Co.,
25 Broad St.
New York.

105 So. La Salle St.
Chicago.

New York, May 21, 1912.

[fol. 118] The following is a summary, prepared by Mr. C. M. Schwab, President of Bethlehem Steel Corporation of his letter dated May 8, 1912, describing this issue of bonds.

"Purposes of Issue:

The proceeds of the $15,200,000 bonds sold to you, in conjunction with Messrs. Kuhn, Loeb & Co., New York, are to be used:

To retire the entire outstanding amount of $6,428,000 Bethlehem Steel Company Five-Year Six Per Cent. Secured Gold Notes.

To purchase $2,668,000 Bethlehem Steel Company First Extension Mortgage 5% Bonds, thereby reducing the outstanding amount of that issue to $8,000,000.

To provide additional working capital.

$2,300,000 bonds remain in the treasury for the general purposes of the Company, and the balance of the author-

ized issue of $50,000,000 Bonds is to be reserved under carefully drawn restrictions of the mortgage for refunding the $8,000,000 First Extension Mortgage 5% Bonds, and for construction or acquisition of additional property at not exceeding 90% of its cost, with limitations in issuing bonds for the latter purpose, having reference to net earnings of the Bethlehem Steel Corporation.

Lien of the Mortgage:

Bonds of this issue will be secured by a mortgage upon the real estate and manufacturing plants of the Bethlehem Steel Company, subject only to its Purchase Money Mort-
[fol. 119] gage, ($7,500,000 outstanding), and its First Extension Mortgage, ($8,000,000, as above shown, outstanding, for the retirement of which a sufficient amount of bonds of this issue will be reserved).

These bonds will also be secured by a first mortgage lien upon real estate and manufacturing plants hereafter acquired by the Bethlehem Steel Company, subject only to the after acquired property clauses of the First Extension Mortgage, (so far as applicable), and to any purchase money or other mortgages subject to which such property may be acquired, but against which an equal face amount of bonds of this issue shall be reserved.

Value of Assets Back of Bonds:

Upon the issue of $15,200,000 bonds sold, the assets of the Bethlehem Steel Company over and above its other liabilities, including its prior mortgages above referred to, will be $25,880,758, and the value of other properties represented by stocks to be pledged to secure the guaranty of Bethlehem Steel Corporation will be $6,766,869, making a total of $32,647,627 of assets back of these First Lien & Refunding Mortgage Bonds, or more than double the amount sold at this time. To the above values of properties represented by stocks pledged about $28,000,000 should be added to represent the real worth of mining properties of the Corporation.

Earnings:

The accounts of the Bethlehem Steel Corporation and its Subsidiary Companies have been audited annually from the
[fol. 120] date of incorporation to the close of the last fiscal

year by Messrs. Price, Waterhouse & Co., and the statements of earnings which follow are based upon the audited accounts.

On the basis of net earnings of the Corporation for 1911, before providing for depreciation or for exploitation and exhaustion of minerals, there is available, after the payment of all charges including amortization on prior issues, $3,826,618 with which to meet the interest charges on these $15,200,000 First Lien & Refunding Mortgage Bonds. This is over Five Times the amount so required and over Three Times the amount of the entire charges on these bonds, including Sinking Fund and amortization.

In General:

The Bethlehem Steel Corporation is one of the most important and successful of the independent steel companies. Its growth and progress have been consistent and steady since its incorporation. Its annual business in 1905 was $14,554,117; in 1911 it was $30,093,022. During the first quarter of 1912 it booked orders aggregating about $12,250,000. Total orders on hand March 31, 1912, about $21,000,000.

The plants are modern and up to date in all particulars and are maintained in a high state of efficiency and repair, as is evidenced by the expenditure or appropriation of $13,608,628 out of earnings, during the last five years, for this purpose.

The Bethlehem Steel Corporation is well rounded out and self-contained, and occupies an independent position with [fol. 121] ample supplies of ore, coal and other raw materials which it either owns or controls."

Copy of letter from Mr. C. M. Schwab, President of the Bethlehem Steel Corporation, giving further information regarding this issue will be furnished on request.

Hallgarten & Co.,
5 Nassau Street,
New York.

Harvey Fisk & Sons,
62 Cedar Street,
New York.

William Salomon & Co.,
25 Broad St.
New York.

105 So. La. Salle St.
Chicago.

EXHIBIT "B", ANNEXED TO AFFIDAVIT OF WM. J. BROWN

[So much of Exhibit "B" as consists of a photostatic copy of a circular in the Dutch language, of which the following portion of Exhibit "B" is a certified translation, is omitted in printing pursuant to stipulation and order printed herein on pages 130 to 132.]

Bethlehem Steel Company

Issue of $15,200,000, 5% First Lien and Refunding Mortgage, 30-year Gold Bonds redeemable on May 1, 1942

The payment of the principal and interest on these bonds is guaranteed by the Bethlehem Steel Corporation, this guarantee being printed on each bond.

Trustee for the Loan: Equitable Trust Company of New York

[fol. 122] This issue is part of an authorized loan amounting to $50,000,000, $17,500,000 of which, including the amount now to be issued, shall be outstanding.

The bonds are issued in the form of Bearer Certificates of $1000. and $500. and these bonds, as to principal and as to interest, may be changed into Registered Certificates, while Registered Certificates may in turn be exchanged for Bearer Bonds.

The loan is redeemable on May 1, 1942 but, at the option of the Company, may be redeemed on any interest payment date in whole or in part at 105% plus the current interest provided notice has been given thereof 12 weeks in advance. The bonds carry semi-annual coupons maturing on May 1st and November 1st.

Principal and interest are payable in New York in gold coin of the United States of or equal to the present standard of weight and fineness, and in Amsterdam at the fixed rate of exchange of guilders 2.49 per dollar without deduction of any tax which the Company may have to pay thereon, or deduct therefrom, in accordance with any existing or future law of the United States of America or of any state, county or municipality thereof.

A sinking fund shall be formed in which there shall be set aside every year 2½% of the bonds outstanding at such time, which, however, shall never be less than $300,000.

On basis of the net receipts of the Company for the fiscal year 1911, an amount of $3,826,618 as interest on the $15,200,000. First Lien & Refunding Mortgage Bonds remains available before taking into consideration write-offs and depletion of the ore mines, but paying all fixed charges includ-
[fol. 123] ing the charges required for the servicing of the Sinking Fund on the previous loans. This amount represents therefore, more than 5 times the amount required for this interest and more than 3 times the amount of all charges on these bonds including the cost of the Sinking Fund servicing.

The proceeds from these $15,200,000 bonds shall be applied as follows:

For the withdrawal of the entire outstanding amount of $6,428,000 Bethlehem Steel Company, 5-years, 6% Insured Gold Bonds;

For the purchase of $2,668,000 Bethlehem Steel Company, 5% First Extension Mortgage bonds whereby the outstanding amount of these bonds is reduced to $8,000,000, and

For the obtaining of further operating capital.

Of these bonds, $2,300,000 shall remain in portfolio for the general use of the Company, while the remaining bonds may only be issued, subject to the limitations set forth in detail in the Mortgage Deed, governing the withdrawal of the remaining $8,000,000—5% First Renewal Mortgage Bonds and for new construction work or for the obtaining of further properties with the stipulation that the amount of the bonds to be issued for this purpose shall not represent more than 90% of the cost price and shall be subject to special stipulations in regard to the receipts.

Messrs. Hope & Co. report that on Tuesday May 21, 1912 until 4 P. M., at the office of Messrs. Van Looan & Co., sub-
[fol. 124] scription shall be open for the above-mentioned loan at the price of 90¾% (the dollar calculated at Dutch Guilders 2.50).

In case of over-subscription, the allotment shall be effected in equivalent proportions as far as possible.

Payment must be made on June 1, 1912 plus one month's interest at the rate of 5% per annum.

Messrs. Hope & Co. shall issue receipts, which shall be exchanged as quickly as possible and without charge, for the

final bonds, bearing coupons maturing on November 1, 1912 and on the following months.

The right to refuse subscriptions is reserved.

Subscriptions to this loan shall also be open in New York, at the offices of Messrs. Hallgarten & Co., Harvey Fisk & Sons, and William Salomon & Co.

In London, at the offices of Salomon & Co.

For further particulars regarding these bonds, reference may be had to the translation of a letter of the President of the Bethlehem Steel Corporation appearing on the back hereof.

Amsterdam, May 17, 1912.

[fol. 125] Certificate of Accuracy

STATE OF NEW YORK,
County of New York, ss:

Translation from The Netherland Language

On this day personally appeared before me Mr. Maarschalk who, after being duly sworn, deposes and states:

That he is a translator of the Netherland Language and English languages by profession and as such connected with the Lawyers' & Merchants' Translation Bureau:

That he is thoroughly conversant with these languages;

That he has carefully made the attached translation from the original document written in the Netherland language, (on the official paper of the Lawyers' & Merchants' Translation Bureau); namely from the prospectus of Hope & Co., dated May 17, 1912, re: the first Lien and Refunding 5% Mortgage Bonds of the Bethlehem Steel Co.

That the attached translation is a true and correct English version of such original, to the best of his knowledge and belief.

(Sworn to by Mr. Maarschalk on December 27, 1934.)

(Here follow two photolithographs, side folios 126 and 127)

EXHIBIT "C," ANNEXED TO AFFIDAVIT OF WM. J. BROWN

FORM 1001
Treasury Department
Internal Revenue Service
Revised July 1934

OWNERSHIP CERTIFICATE

TO BE USED BY A NONRESIDENT ALIEN, A FOREIGN PARTNERSHIP OR CORPORATION
In Connection with Interest on Bonds of a Domestic or Resident Corporation

DEBTOR CORPORATION	OWNER OF BONDS (Print name)
NAME	NAME .....
ADDRESS	STREET .....
NAME OF BOND	CITY ..... COUNTRY .....

Date interest due on bonds ..... Date paid .....

I certify that to the best of my knowledge and belief the information entered hereon is correct.

.....
(Signature of owner, trustee, or agent)

.....
(Address of trustee or agent)

.....
(Fiduciaries must disclose the name of estate or trust)

Owner	With tax-free covenant and issued before January 1, 1934		Without tax-free covenant or issued on or after January 1, 1934, with tax-free covenant deduct	
	If corporation assumes over 2% of the tax	If corporation assumes not over 2% deduct		
1. Nonresident alien individual, fiduciary, or partnership	$.....	2% $.....	4% $.....	
2. Corporation having no office or place of business in United States	$.....	11¼% $.....	13¾% $.....	
3. Unknown	$.....	2% $.....	4% $.....	

NOTE.—If you discover at the close of the year that your total income including dividends from sources within the United States does not exceed $5,000 and, exclusive of such dividends, is less than the personal exemption of $1,000 you should prepare, not later than May 1 of the following year, an exemption certificate on Form 1002 and forward it to the corporation which issued the bonds.

2—16477

126

127

EXHIBIT "D", ANNEXED TO AFFIDAVIT OF WM. J. BROWN

FORM 1001
Treasury Department
Internal Revenue Service
Revised July 1936

OWNERSHIP CERTIFICATE

TO BE USED BY A NONRESIDENT ALIEN, A FOREIGN PARTNERSHIP OR CORPORATION
In Connection with Interest on Bonds of a Domestic or Resident Corporation

DEBTOR CORPORATION	OWNER OF BONDS (Print name)
NAME.....	NAME.....
ADDRESS.....	STREET.....
NAME OF BOND.....	CITY..... COUNTRY.....

Date interest due on bond..... Date paid.....

I certify that to the best of my knowledge and belief the information entered hereon is correct.

.....
(Signature of owner, trustee, or agent)

.....
(Address of trustee or agent)

.....
(Fiduciaries must disclose the name of estate or trust)

Owner	With tax-free covenant and issued before January 1, 1934		Without tax-free covenant or issued on or after January 1, 1934, with tax-free covenant deduct
	If corporation assumes over 2% of the tax	If corporation assumes not over 2% deduct	
1. Nonresident alien individual, fiduciary, or partnership	$.....	8% $.....	10% $.....
2. Corporation having no office or place of business in United States	$.....	13% $.....	15% $.....
3. Unknown	$.....	8% $.....	10% $.....

GPO c2—16477

187

[fol. 128] IN SUPREME COURT OF NEW YORK, COUNTY OF NEW YORK

AFFIDAVIT OF DONALD E. FORBES, *REAL* IN OPPOSITION TO MOTION

STATE OF NEW YORK,
County of New York, ss:

Donald E. Forbes, being duly sworn, deposes and says:

I reside at 64 West 11th Street, Borough of Manhattan, City of New York.

I am a practicing attorney of the Supreme Court of the State of New York, and I am associated with Cravath, de Gersdorff, Swaine & Wood, No. 15 Broad Street, New York, N. Y., attorneys for the defendant in the above-entitled action.

I have examined various issues of The Commercial and Financial Chronicle, which publishes weekly quotations of prices at which bonds are sold on the New York Stock Exchange, including the First Lien and Refunding Mortgage Five Per Cent. Thirty-Year Gold Bonds of the defendant, Bethlehem Steel Company.

That the quotations so published for the said Bonds of the defendant on the dates hereafter mentioned are as follows:

June 9, 1933:

(ranging from 91⅛ to 93 for the week ending on that date)

[fol. 129] October 13, 1933: 102¾

(and ranging from 101 to 103 for the week ending on that date)

November 3, 1933: 100½

(and ranging from 99¾ to 101⅛ for the week ending on that date)

April 20, 1934: 112½

(and ranging from 111 to 113⅞ for the week ending on that date)

August 17, 1934: 110⅝

(and ranging from 110¼ to 111⅞ for the week ending on that date)

February 1, 1935:

(ranging from 110 to 111½ for the week ending on that date)

(Sworn to by Donald E. Fobes on May 22, 1937.)

In Supreme Court of New York, County of New York

Opinion by Mr. Justice Hofstadter

N. Y. L. J.—October 15, 1937

Anglo-Continentale Treuhand A. G. v. Bethlehem Steel Co.—Motion for summary judgment is granted. This court has already granted summary judgment on a similar state of facts. There is nothing contained in the recent decisions to warrant a result different from that reached by this court in the cases decided in June, 1936. Settle order.

[fol. 130] In Supreme Court of New York, Appellate Division, First Department

Stipulation and Order as to Papers Omitted in Printing

It is hereby stipulated and agreed by and between the attorneys for the respective parties hereto that the following papers need not be printed and may be omitted from the printed papers on appeal from the judgment and order in the above-entitled action and that copies of each of the same may be handed up to the Court on the argument of this appeal, and may be referred to in the briefs and arguments with the same force and effect as though formally included in the printed papers on appeal:

(1) Exhibits A to L, inclusive, annexed to the affidavit of Arpad Plesch, sworn to May 17, 1937, in support of the motion for summary judgment, each of which is a photostatic copy of an exemplified certificate of protest, in the

Dutch language (sworn English translations of Exhibits C, E, F, G and H are also annexed as part of said five Exhibits, respectively) for nonpayment of coupons presented at Hope & Co., in Amsterdam, Holland, in each instance on behalf of one or another of the respective plaintiffs herein;

(2) So much of Exhibit B annexed to the affidavit of William J. Brown, sworn to May 22, 1937, in opposition to the [fol. 131] motion for summary judgment, as consists of a photostatic copy of a circular, in the Dutch language, issued by Hope & Co. in Amsterdam, Holland, and dated May 17, 1912, in respect of the issuance of Bethlehem Steel Company First Lien and Refunding Mortgage Five Per Cent. Thirty-Year Gold Bonds; and

(3) Stipulation between the parties hereto, dated July 30, 1937, pursuant to which the plaintiffs have deposited their coupons (together with United States Treasury Department Ownership Certificates, Form 1001) with the Treasurer of Bethlehem Steel Corporation in New York, as recited in the order appealed from.

It is further stipulated and agreed by and between the attorneys for the respective parties hereto, that translations of two of the photostatic copies of the exemplified certificates of protest annexed, as Exhibits A to L, inclusive, to the affidavit of Arpad Plesch, sworn to May 17, 1937, in support of the motion for summary judgment, are generally in the forms annexed hereto as Schedule I and Schedule II and made a part hereof, with the blanks filled in as indicated by the words in brackets ([ ]) in said Schedule I and Schedule II; that said certificates of protest recite the presentation at Hope & Company in Amsterdam, Holland, of coupons, in each instance on behalf of one or another of the respective plaintiffs herein, of the various maturity dates and amounts and bearing the serial numbers as indicated in Schedule III annexed hereto and made a part hereof; that [fol. 132] Schedule IV annexed hereto and made a part hereof shows (1) the dates of the respective protests in behalf of the respective plaintiffs, (2) the face amount of the coupons as expressed in American dollars, (3) the face amount of the coupons as expressed in guilders, being also in each instance the amount demanded by or in behalf of the respective plaintiffs, and (4) the dollar amount awarded on plaintiffs' motion, including in the amount so awarded

the dollar value of the guilders involved in the protest fees; and that the aforesaid certificates of protest recite, in each instance, the presentation of said coupons, the demand for payment of said coupons in guilders on the dates and in the amounts, respectively, as indicated in said Schedule IV, and the payment of the protest fees in guilders in behalf of the various plaintiffs.

Dated, March 9, 1938.

Harry Hoffman, Attorney for Plaintiffs-Respondents. Cravath, deGersdorff, Swaine & Wood, Attorneys for Defendant-Appellant.

So ordered. ——, F. M.

[fol. 133] Schedule I, Annexed to Stipulation as to Papers Omitted in Printing

Impressed Stamp 50 Cents

On the [day] of [month] in the year 1900 and [year], at the request of [in certain of the protests the particular plaintiffs and their addresses are set forth, and in other of the protests the name of a bank in Amsterdam with its address is set forth],

I, Johan Philip Christiaan Diederich Brinkman, bailiff to the Arrondissement Court of Justice, of and residing at Amsterdam, in the presence of the hereinafter mentioned witnesses, serving my writ and speaking with [name of individual], proxy of the firm of Hope & Co., established at Amsterdam, Keizersgracht No. 577/581,

Did summon that said firm immediately pay to me, bailiff, on behalf of requester as holder of the hereinafter mentioned coupons now due, in exchange for said coupons, the sum of [total face amount in guilders of coupons presented] being the total amount of [number] coupons of [face amount in guilders of each coupon], each belonging to the 5% bonds of the Bethlehem Steel Company for six months' interest due [maturity date of coupons], the coupons being numbered [serial numbers of coupons], whereupon the person to whom I spoke did respond

"Consequent on instructions from the Company, these coupons may only be paid in guilders when in addition to ownership certificates a specially formulated declaration is at the same time produced to the effect that the owner of the bonds has for the past six months been a bona fide resident

of a country other than the U. S. of America and 2nd that the bonds have since June 5th 1933 been the constant prop-
[fol. 134] erty of a bona fide resident of a country other than the U. S. of America."

And on being asked to sign this response did deem it unnecessary.
And not having obtained payment in guilders, I, bailiff, did charge the firm summoned with default, and have recorded the execution of this writ, of duly charging with default, of indemnification of all charges, losses and interests in accordance with the law, reserving on behalf of requester all further rights and actions in connection herewith.

Executed in the presence of [names of two witnesses], both acting in this instance outside the scope of their professions and residing at Amsterdam, as my witnesses, who together with me, have signed this writ in the original and in the copy left with the firm summoned by me, speaking as stated above.

The costs of this present are [number of guilders]

Sal. [number of guilders]
Exp. [number of guilders] Signed:—J. P. C. D. Brinkman,
Wit. [number of guilders] [Signatures of two witnesses]

[total number of guilders]

Registered at Amsterdam
this [day] of [month], 1900 and [year]
Vol. [number] Page [number] No. [number];
[number] pages; no alterations.
Fee received [number of guilders]

The Inspector
[signature]
Clerk.

Translation fee including legalization [amount indicated]

[fol. 135] Schedule II, Annexed to Stipulation as to Papers Omitted in Printing

Impressed Stamp 50 Cents

On the [day] of [month] in the year 1900 and [year], at the request of [in certain of the protests the particular plaintiffs and their addresses are set forth, and in other of the protests the name of a bank in Amsterdam with its ad-

dress is set forth], I, Johan Philip Christiaan Diederich Brinkman, bailiff to the Arrondissement Court of Justice, of and residing at Amsterdam, in the presence of the hereinafter mentioned witnesses, serving my writ and speaking with [name of individual], proxy of the firm of Hope & Co., established at Amsterdam, Keizersgracht No. 577/581, did summon that said firm immediately pay to me, bailiff, on behalf of requester as holder of the hereinafter mentioned coupons now due, in exchange for said coupons, the sum of [total face amount in guilders of coupons presented] being the total amount of [number] coupons of [face amount in guilders of each coupon], each belonging to the 5% bonds of the Bethlehem Steel Company for six months' interest due [maturity date of coupons], the coupons being numbered [serial numbers of coupons], whereupon the person to whom I spoke did respond

"that if the coupons are presented, accompanied by the declaration prescribed by the Bethlehem Steel Company, and an ownership certificate we are authorized to pay, in exchange for the coupons, the amount as stated on the coupons in Dutch currency";

And on being asked to sign this response did deem it unnecessary.

[fol. 136] And not having obtained payment in guilders, I, bailiff, did charge the firm summoned with default, and have recorded the execution of this writ, of duly charging with default, of indemnification of all charges, losses and interests in accordance with the law, reserving on behalf of requester all further rights and actions in connection herewith.

Executed in the presence of [names of two witnesses], both acting in this instance outside the scope of their professions and residing at Amsterdam, as my witnesses, who together with me, have signed this writ in the original and in the copy left with the firm summoned by me, speaking as stated above.

The costs of this present are [number of guilders]

Sal. [number of guilders]
Exp. [number of guilders] Signed:—J. P. C. D. Brinkman,
Wit. [number of guilders] [Signatures of two witnesses].

[total number of guilders]

Registered at Amsterdam
the [day] of [month], 1900 and [year]
Vol. [number] Page [number] No. [number];
[number] pages; no alterations.
Fee received [number of guilders]

The Inspector
[signature]
Clerk.

Translation fee including legalization [amount indicated]

[fol. 137] Schedule III, Annexed to Stipulation as to Papers Omitted in Printing

Numbers preceded by the letter "M" are the serial numbers of coupons in the face amount of $25, or £5.2.10, or 62.25 guilders, and numbers preceded by the letter "D" are the serial numbers of coupons in the face amount of $12.50, or £2.11.5, or 31.13 guilders.

Plaintiff Anglo-Continentale Treuhand, A. G.

5—Coupons maturing on May 1, 1935:

M6488	M6625	M8680	M8703	M17728

167—Coupons maturing on November 1, 1935:

M6488	M15553	M11370	M3301	M16961
6625	15617/8	11180	3218	16951
8680	15633/4	14376	2758	16974
8703	15645	14307	2228/9	17785
17728	15720	14236	1667	17260
16390	15758	11084	13656/8	17194
16564/5	15764/6	10907	17846	17161
16799	15791/3	9484	17873	17136
14470	15828	9420	17916	17120
14481	15881	9378	17832	19139
14569	15896	7813	17830	19127
14587	15929	7330/1	17449	19069
14779	16011	6266	17415	19036
14831	16053	6218	17318	19006/8
14834	16110	5952	17269	18970
14920/2	16176	5788	17263	18909
14924/5	16181	5879/0	18444	18542
15044/5	16186	5024	17833	19306
15074	16199	4941	18460/1	19275
15232	16226	4671	18486	19180
15252	16352/3	4664	17458	19154
15289/92	13487	4148	17723/5	19142
15362	13399	4087	17729	16975
15409/11	12615	3273	17826/9	16985
15477	11639	3471/2	16813	17016
15516/21	11373	3457	16923	17084
				17086

Plaintiff Anglo-Continentale Treuhand, A. G.—Continued

[fol. 138]

30—Coupons maturing on November 1, 1935:

D267	D132	D2885	D2134	D1664
386	1265	2792	2136	1517
622/3	2973/4	2653	1811	1456
951/2	2945	2583/4	1808	1269
1260/1	2889	2495/6	1803	

209—Coupons maturing on May 1, 1936:

M1472	M13648	M15246	M17120	M14307
2428	14577	15363	15553	15720
2983	14605/6	15638	5880	16961
3808	17194	15826	17136	15232
6875	19006/7	16357	19069	17084
7596	17318	16593	17449	16011
7812	17723/4	16814	17916	15791/3
8134	9420	16824	19275	19180
8623	7330/1	17409	15618	15044/5
M12603	M16053	M17448	M19253	M14920/2
12769	5024	18452	18463	17458
12775	13487	19334	18931	15645
13215	14923	19344	19019	17785
13233	14926/7	19222	19219	18444
2758	17016	18460/1	6218	17729
16176	2229	2228	19008	15401
12615	9378	17725	16564/5	1541
11639	15633	15252	5879	1600
3273	18970	15520/1	4148	1767
16181	15362	15409	18542	1950
17161	17873	15517	15634	2136
15074	14779	15410/1	9484	2795
15617	19306	17846	14831	3966
15896	18909	15929	19154	2094
17826/8	16951	15881	17415	961
17832/3	17829	15518/9	14569	588/9
16199	17263	16110	15828	6429/33
16200	15516	15758	19142	6488
19139	19036	16352/3	16186	6625
19127	14925	16390	3301	8680

[fol. 139]

14587	14376	10907	4087	8703
14236	15289/90	17260	3457	10643
15766	15764/5	17269	16813	10958
15477	6266	17830	16923	11316
14924	18486	11180	17086	
16799	14470	14834	16985	
13399	11084	14481	16974/5	

Plaintiff Anglo-Continentale Treuhand, A. G.—Continued

40—Coupons maturing on May 1, 1936:

D2973/4	D1314	D622/3	D2583/4	D1427/8
2653	2652	951/2	2134	278
2889	1456	2765/6	2136	186
2885	1664	2933	2792	291
132	1517	1260/1	2936	344
2945	1269	1808	2969	380
267	386	1803	2453	
2495/6	1265	1811	1436	

Plaintiff Anglo-Continentale Trust Maatschappij

151—Coupons maturing on November 1, 1934:

M15633/4	M11639	M17136	M15720	M15362
15617/8	12615	17120	15645	15252
15521	13487	17086	16199	15232
15553	13399	17016	16186	15074
15518/9	14236	17084/5	16181	15044/5
15520	16974/5	19142	16176	14924/5
3457	16961	19139	16110	14920/2
3301	16951	19127	15929	14834
3273	16923	19069	16011	14831
2758	16813	19036	16053	14779
2228/9	19306	18970	15896	584
4148	19275	18909	15881	684/6
4087	19180	18542	14587	753
5879	19154	18486	14569	758
5024	17785	18444	14481	770
M6218	M17729	M17916	M14470	M840
M5880	17723/5	17873	14307	845

[fol. 140]

6266	17458	17846	16799	919
7330/1	17449	17832/3	16390	3966
9378	17415	17830	16352/3	2795
9420	17318	17826/9	16226	2136
9484	17269	15828	15516/7	1950
10907	17263	15791/3	15477	1767
11084	17260	15764/6	15410/1	1600
11180	17161	15758	15409	1541

26—Coupons maturing on November 1, 1934:

D623	D267	D2792	D1808	D1269
622	2885	2583/4	1811	1265
951	2889	2134	1664	1260/1
952	2973/4	2136	1517	
386	2653	1803	1456	

Plaintiff Anglo-Continentale Trust Maatschappij—Continued.

212—Coupons maturing on May 1, 1935:

M19036	M17826/9	M18460/1	M11639	M16181
19006/8	16974/5	14779	12615	16186
18970	16961	14831	13399	16199
18909	16951	14834	13487	16226
19306	16923	14920/2	13656/8	16352/3
19275	17458	14924/5	6218	16390
19180	17449	9484	6266	16564/5
19154	17415	10907	7330/1	16799
17785	17318	11084	7813	16813
17729	17269	14236	9378	1667
17723/5	18444	14307	9420	2228/9
17832	17916	14376	3457	2758
19142	17873	14470	3471/2	3218
19139	17846	14481	4087	3273
19127	17833	14569	4148	3301
19060	17120	14587	4664	15766
17263	17086	5879	4671	15791/3
17260	17084	5880	4941	15828
17194	17016	5952	5024	15881
17161	16985	11370	5788	15896
17136	18542	11180	16110	15929

[fol. 141]

17830	18486	11373	16176	16011
16053	15520/1	15256	7332	753
15765	15044/5	13551	7267	684/6
15764	15074	13547/8	6621	584
15758	15232	13228	6564	19387
15720	15252	13016	5748	19221
15645	15289	11877	5399	19158
15633/4	15290/2	11873	4429	19150
15617/8	15362	11374	2121	19143
15553	16984	11208	919	18992
15409	16639	9433	844/5	18386
15410/1	15922	9423/4	840	17847/8
15477	15800	8620	770	17734
15516/9	15401	8578	758	17182

30—Coupons maturing on May 1, 1935:

D2974/3	D2653	D1811	D1456	D623/2
2945	2584/3	1808	1269	386
2889	2496/5	1803	1265	267
2885	2136	1664	1261/0	132
2792	2134	1517	952/1	

Plaintiff Mondiale Handels-Und Verwaltungs, A. G.

37—Coupons maturing on November 1, 1934:

M19344	M14577	M15826	M16357	M18452
12775	14605/6	7596	8134	18463
12789	14923	16593	7812	18931
8623	2428	16814	16824	19019
13215	3808	14926/7	19219	19334
13233	6875	15246	17409	19253
13648	15638	15363	17448	19222

16—Coupons maturing on November 1, 1934:

D2999	D2933	D2652	D1010	D841/2
2969/70	2765	2573	949/50	507
2936	2766	1009		

[fol. 142]

57—Coupons maturing May 1, 1935:

M11539/8	M9230/1	M18452	M14923	M18498/9
16718	15363	2983	14605/6	16824
6431	15826	13648	14926	19334
7596	19253	13233	17448	17452
3808	9332	18463	15892/3	12603
2428	19219	18931	19344	7812
8623	14927	19222	12769	14577
6875	15638	12775	18484/5	16357
8134	15246	13215	17409	16593
4076	16814	5457	7782	
1472	19019			

20—Coupons maturing May 1, 1935:

D411	D2969	D2936	D2933	D2970
344	412	950/49	2765	1010/9
389	507	841	2766	2573
2999	842	2652		

98—Coupons maturing November 1, 1935:

M14605/6	M16718	M19344	M6875	M12694/6
14833	16806	19334	7162	12769
14923	16814	588/89	7596	12775
14926/7	16824	961	7782	13073
14928	16874	1472	7812	13215
15246	17013	2094	8134	13233
15359	17068	2428	8196	13648
M15363	M17170	M2983	M8198	M14577
15569/71	17409	3808	8623	18931
15638	17448	4076	8685	19017
15826	17452	4248	8686/90	19019
15831	18452	5457	9330/32	19205
15834	18463	5459	9701	19219
15892/3	18484/5	5600	11451	
16317	18498/9	5813/14	11538	
16357	19222	6327	11539	
16593	19253	6549	12603	

Plaintiff Mondiale Handels-Und Verwaltungs, A. G.—Continued

[fol. 143]

22—Coupons maturing November 1, 1935:

D201	D507	D1009/10	D2765/66	D2969/70
344	841	1314	2933	2999
380	842	2573	2936	
411/12	949/50	2652		

64—Coupons maturing May 1, 1936:

M19052	M13484	D6549	M11539	M15892/93
19120	18498	7162	12694/96	16032/34
19205	19017	7782	13073	16317
19208	4076	8196	14833	16626
19316	4248	8198	14928	16718
17170	5457	8685/90	15221	16806
17722	5459	9330/32	15359	16874
18485	5600	9701	15569/71	17013
18499	5813/14	11451	15831	17068
17452	6327	11538	15834	

12—Coupons maturing May 1, 1936:

D411/12	D841/2	D1009	D2573	D2999
507	949/50	1010	2970	

Plaintiff Hydropress Handels, A. G.

8—Coupons maturing May 1, 1935:

M 6429/30	M10643	M10958	M11316	M17170
6432/3				

4—Coupons maturing May 1, 1935:

D186	D1427/8	D1436

[fol. 144] Schedule IV, Annexed to Stipulation as to Papers Omitted in Printing

Date of Presentation	Face Amount in Dollars	Face Amount in Guilders, Being Also in Each Instance the Amount Demanded by or in Behalf of the Respective Plaintiffs	Dollar Amount Awarded on Plaintiff's Motion*
Plaintiff Anglo-Continentale Treuhand, A. G.			
Apr. 17, 1936	$4,425	11,018.40	$7,472.28
Jul. 2, 1936	5,800	14,442.23	9,795.55
Jul. 20, 1936	250	622.50	453.56 (1)
Plaintiff N. V. Anglo-Continentale Trust Maatschappij			
Feb. 26, 1935	250	622.50	421.23
Jun. 18, 1935	8,275	20,605.30	13,942.78
Jul. 9, 1935	1,250	3,112.50	2,155.49 (2)
Plaintiff Mondiale Handels-Und Verwaltungs, A. G.			
Jun. 18, 1935	2,700	6,723.18	4,538.04
Apr. 1, 1936	1,625	4,046.36	2,731.23
Jul. 9, 1936	2,950	7,345.56	4,995.81 (3)
Plaintiff Hydropress Handels, A. G.			
Jul. 21, 1936	250	622.52	432.21 (4)

*The dollar amounts awarded to the plaintiffs in respect of coupons as shown in this column, are calculated at the lowest rate of exchange in Amsterdam, Holland, on the respective maturity dates of said coupons, using the rates set forth in the affidavit of George L. LeBlanc sworn to on September 9, 1937, in support of the motion.

(1) Includes $31.40 in respect of protest fees in the amount of 46.30 guilders, the dollar value of said guilders being calculated at the lowest rate of exchange in Amsterdam, Holland, on the respective dates of presentation, using the rates set forth in the affidavit of George L. LeBlanc sworn to September 9, 1937, in support of the motion.

(2) Includes $49.36 in respect of protest fees in the amount of 72.95 guilders, the dollar value of said guilders being calculated at the lowest rate of exchange in Amsterdam, Holland, on the respective dates of presentation, using the rates set forth in the affidavit of George L. LeBlanc sworn to September 9, 1937, in support of the motion.

(3) Includes $37.66 in respect of protest fees in the amount of 55.80 guilders, the dollar value of said guilders being calculated at the lowest rate of exchange in Amsterdam, Holland, on the respective dates of presentation, using the rates set forth in the affidavit of George LeBlanc sworn to September 9, 1937, in support of the motion.

(4) Includes $10.04 in respect of protest fees in the amount of 14.80 guilders, the dollar value of said guilders being calculated at the lowest rate of exchange in Amsterdam, Holland, on the date of presentation, using the rate set forth in the affidavit of George L. LeBlanc sworn to September 9, 1937, in support of the motion.

[fols. 145-146] In Supreme Court of New York

Stipulation Waiving Certification

It is hereby stipulated that the papers as hereinbefore printed consist of true and correct copies of the notice of appeal, the judgment and order appealed from and all the papers upon which the court below acted in making the judgment and order appealed from and the whole thereof now on file in the office of the Clerk of the County of New York.

Certification thereof in pursuance of Section 616 of the Civil Practice Act is hereby waived.

Dated, April —, 1938.

Cravath, deGersdorff, Swaine & Wood, Attorneys for Defendant-Appellant. Harry Hoffman, Attorney for Plaintiffs-Respondents.

[fol. 147] In Supreme Court of New York, New York County

Index No. 32,424—1936

Anglo-Continentale Treuhand, A. G., a Liechtenstein Corporation, N. V. Anglo-Continentale Trust Maatschappij (Anglo Continental Trust Company), a Netherlands Corporation, Mondiale Handels-und Verwaltungs, A. G., a Liechtenstein Corporation, and Hydropress Handels, A. G., a Liechtenstein Corporation, Plaintiffs,

against

Bethlehem Steel Company, Defendant

Notice of Appeal to Court of Appeals by Plaintiffs-Appellants-Respondents

Sirs:

Please take notice that the above-named plaintiffs hereby appeal to the Court of Appeals of the State of New York from so much of the judgment entered upon the decision of the Appellate Division of the Supreme Court, First Judicial Department, in the office of the Clerk of the County of New York on the 29th day of July, 1938, as modifies and reduces the judgment of the Supreme Court, New York County, en-

tered in the office of the Clerk of the County of New York on the 30th day of October, 1937, in favor of the plaintiff [fol. 148] Anglo-Continentale Treuhand, A. G. and against the defendant Bethlehem Steel Company, from the sum of $19,245.48 to the sum of $11,834.17, and as modifies and reduces the judgment of the Supreme Court, New York County, in favor of the plaintiff N. V. Anglo-Continentale Trust Maatschappij (Anglo-Continental Trust Company) and against the defendant Bethlehem Steel Company, from the sum of $18,898.70 to the sum of $11,600.67, and as modifies and reduces the judgment of the Supreme Court, New York County, in favor of the plaintiff Mondiale Handels-Und Verwaltungs, A. G. and against the defendant Bethlehem Steel Company, from the sum of $13,579.81 to the sum of $8,369.69, and as modifies and reduces the judgment of the Supreme Court, New York County, in favor of the plaintiff Hydropress Handels, A. G. and against the defendant Bethlehem Steel Company, from the sum of $465.85 to the sum of $280.37; and that the above-named plaintiffs also appeal from so much of said judgment as awards costs and disbursements to the defendant and against the plaintiffs in the sum of $881.70; and that the above-named plaintiffs also appeal from the order of the Appellate Division, First Judicial Department, made on July 22, 1938, and entered in the office of the Clerk of the County of New York on July 27, 1938, upon which the aforesaid judgment of the Appellate Division is based; and that the above-named plaintiffs also appeal from each and every such part of said order entered July 27, 1938 and from each and every such part of said judgment entered July 29, 1938, as modifies and reduces the amount of the recovery of the plaintiff Anglo-Continentale Treuhand, A. G. from the sum of $19,245.48 to the sum of [fol. 149] $11,834.17, and as modifies and reduces the amount of the recovery of the plaintiff Anglo-Continentale Trust Maatschappij (Anglo-Continentale Trust Company) from the sum of $18,898.70 to the sum of $11,600.67, and as modifies and reduces the amount of the recovery of the plaintiff Mondiale Handels-Und Verwaltungs, A. G. from the sum of $13,579.81 to the sum of $8,369.69, and as modifies and reduces the amount of the recovery of the plaintiff Hydropress Handels, A. G. from the sum of $465.85 to the sum of $280.37; and that the above-named plaintiffs also appeal from each and every such part of said order entered July 27, 1938 and from each and every such part of said judgment entered

July 29, 1938 as awards costs and disbursements to the defendant and against the plaintiffs in the sum of $881.70.

Dated, New York, September 21, 1938.

Yours, etc., Harry Hoffman, Attorney for Plaintiffs-Appellants, Office & P. O. Address, 30 Pine Street, Borough of Manhattan, New York, N. Y.

To Messrs. Cravath, deGersdorff, Swaine & Wood, Attorneys for Defendant, 15 Broad Street, New York, N. Y. Archibald R. Watson, Esq., Clerk of the County of New York.

[fol. 150] In Supreme Court of New York, New York County

Index No. 32,424—1936

Anglo-Continentale Treuhand, A. G., a Liechtenstein Corporation, N. V. Anglo-Continentale Trust Maatschappij (Anglo-Continental Trust Company), a Netherlands Corporation, Mondiale Handels-und Verwaltungs, A. G., a Liechtenstein Corporation, and Hydropress Handels, A. G., a Liechtenstein Corporation, Plaintiffs,

against

Bethlehem Steel Company, Defendant

Notice of Appeal to Court of Appeals by Defendant-Respondent-Appellant

Sirs:

Please take notice that the defendant above-named hereby appeals to the Court of Appeals of the State of New York from so much, and only such part, of the judgment of modification in the above-entitled action entered in the office of the Clerk of the County of New York on the 29th day of July, 1938, as adjudged that the judgment in the above-entitled action entered in the office of the Clerk of the County of New York on the 30th day of October, 1937, and the order in the above-entitled action entered in the office of the Clerk [fol. 151] of the County of New York on the 26th day of October, 1937, be modified by reducing the amount of the recovery therein of plaintiff Anglo-Continentale Treuhand,

A. G., of Liechtenstein, Europe, to an amount in excess of $10,475, of plaintiff Anglo-Continentale Trust Maatschappij (Anglo-Continental Trust Company) of Rotterdam, The Netherlands, Europe, to an amount in excess of $9,775, of plaintiff Mondiale Handels-Und Verwaltungs, A. G., of Liechtenstein, Europe, to an amount in excess of $7,275, and of plaintiff Hydropress Handels, A. G., of Liechtenstein, Europe, to an amount in excess of $250, which judgment of modification was entered upon an order of the Appellate Division, First Department (two Justices dissenting and voting for affirmance), entered in the office of the Clerk of the County of New York on the 27th day of July, 1938; and

Please take further notice that the defendant above-named hereby appeals to said Court of Appeals from so much, and only such part, of said order of the Appellate Division, First Department, as ordered and adjudged (two Justices dissenting and voting for affirmance) that said judgment entered on the 30th day of October, 1937, and said order entered on the 26th day of October, 1937 (which are the judgment and order referred to in said order of the Appellate Division, First Department, as the order and judgment appealed from), be modified so as to award interest to plaintiff Anglo-Continentale Treuhand, A. G. on $4,425 from April 17, 1936, on $5,800 from July 2, 1936, and on $250 from July 20, 1936, to plaintiff Anglo-Continentale [fol. 152] Trust Maatschappij (Anglo-Continental Trust Company) on $250 from February 26, 1935, on $8,275 from June 18, 1935, and on $1,250 from July 9, 1935, to plaintiff Mondiale Handels-Und Verwaltungs, A. G. on $2,700 from June 18, 1935, on $1,625 from April 1, 1936, and on $2,950 from July 9, 1936, and to plaintiff Hydropress Handels, A. G. on $250 from July 21, 1936.

Yours, etc., Cravath, deGersdorff, Swaine & Wood, Attorneys for Defendant-Appellant, No. 15 Broad Street, New York, N. Y.

To Harry Hoffmann, Esq., Attorney for Plaintiffs, 30 Pine Street, New York, N. Y. Archibald R. Watson, Esq., Clerk of the County of New York.

[fol. 153] In Supreme Court of New York, New York County

Index No. 32,424—1936

Judgment of Modification

Defendant having appealed to the Appellate Division of the Supreme Court, First Judicial Department, from the judgment entered herein against defendant in the office of the Clerk of the County of New York on October 30, 1937, in favor of plaintiff Anglo-Continentale Treuhand, A. G. for the sum of $19,245.48, in favor of plaintiff Anglo-Continentale Trust Maatschappij (Anglo-Continental Trust Company) for the sum of $18,898.70, in favor of plaintiff Mondiale Handels-Und Verwaltungs, A. G. for the sum of $13,579.81, and in favor of plaintiff Hydropress Handels, A. G. for the sum of $465.85 and for costs in favor of said plaintiffs, and from the order upon which said judgment is based, entered in the office of said Clerk on October 26, 1937, which order struck out the amended answer of defendant and directed that judgment be entered in favor of the plaintiffs, and said Appellate Division, on July 22, 1938, having made an order and judgment modifying said judgment and order appealed from (two of the Justices dissenting and voting for affirmance) by reducing the amount of the recoveries of the respective plaintiffs to the following sums: Anglo-Con-
[fol. 154] tinentale Treuhand, A. G., $10,475, with interest on $4,425 from April 17, 1936, on $5,800 from July 2, 1936, and on $250 from July 20, 1936; Anglo-Continentale Trust Maatschappij (Anglo Continental Trust Company), $9,775, with interest on $250 from February 26, 1935, on $8,275 from June 18, 1935, and on $1,250 from July 9, 1935; Mondiale Handels-Und Verwaltungs, A. G. $7,275, with interest on $2,700 from June 18, 1935, on $1,625 from April 1, 1936, and on $2,950 from July 9, 1936; Hydropress Handels, A. G., $250, with interest thereon from July 21, 1936; and as so modified affirming said judgment and order, with costs and disbursements of the appeal to the defendant, and the remittitur of said Appellate Division having been filed in the office of the Clerk of this Court on the 27th day of July, 1938, it is

Adjudged that the judgment entered herein on October 30, 1937, and the order entered herein on October 26, 1937, upon which said judgment is based, be and are hereby modi-

fied by reducing the amount of the recovery therein of plaintiff Anglo-Continentale Treuhand, A. G. of Liechtenstein, Europe, from the sum of $19,245.48 to the sum of $11,834.17, of plaintiff Anglo-Continentale Trust Maatschappij (Anglo-Continental Trust Company) of Rotterdam, The Netherlands, Europe, from the sum of $18,898.70 to the sum of $11,600.67, of plaintiff Mondiale Handels-Und Verwaltungs, A. G. of Liechtenstein, Europe, from the sum of $13,579.81 to the sum of $8,369.69, and of plaintiff Hydropress Handels, A. G. of Liechtenstein, Europe, from the sum of $465.85 to the sum of $280.37; and it is

[fol. 155] Further adjudged that Bethlehem Steel Company, defendant, a Pennsylvania corporation, of 25 Broadway, New York, N. Y., recover of Anglo-Continentale Treuhand, A. G., a Liechtenstein corporation, N. V. Anglo-Continentale Trust Maatschappij (Anglo-Continental Trust Company), a Netherlands corporation, Mondiale Handels-Und Verwaltungs, A. G., a Liechtenstein corporation, and Hydropress Handels, A. G., a Liechtenstein corporation, plaintiffs, the sum of $881.70 costs and disbursements on said appeal, as taxed, and that said defendant have execution thereof.

Judgment signed this 29th day of July, 1938.

Archibald R. Watson, Clerk. (Seal.)

[fol. 156] In Supreme Court of New York, Appellate Division

Order of Modification and Affirmance as so Modified—July 22, 1938

Present: Hon. James O'Malley, Hon. Alfred H. Townley, Hon. Irwin Untermyer, Hon. Albert Cohn, Hon. Joseph M. Callahan, Justices.

5590

An appeal having been taken to this Court by the defendant from the judgment entered herein against defendant in the office of the Clerk of the County of New York on October 30, 1937, in favor of plaintiff Anglo-Continentale Treuhand, A. G., for the sum of $19,245.48, in favor of plaintiff Anglo-Continentale Trust Maatschappij (Anglo-Continental Trust Company) for the sum of $18,898.70, in favor of plaintiff Mondiale Handels-Und Verwaltungs,

A. G. for the sum of $13,579.81, and in favor of plaintiff Hydropress Handels, A. G. for the sum of $465.85 and for costs in favor of said plaintiffs, and from the order upon which said judgment is based made herein by Mr. Justice Samuel H. Hofstadter on October 25, 1937, and entered in [fol. 157] the office of said Clerk on October 26, 1937, which order struck out the amended answer of defendant and directed that judgment be entered in favor of the plaintiffs.

And said appeal having been argued by Mr. William D. Whitney of counsel for the appellant, and by Mr. Harry Hoffman, attorney for the plaintiffs-respondents; and due deliberation having been had thereon.

It is hereby ordered and adjudged (two of the Justices dissenting and voting for affirmance):

That the judgment and order appealed from be, and the same are hereby, modified by reducing the recoveries of the respective plaintiffs to the following sums: Anglo-Continentale Treuhand, A. G., $10,475, with interest on $4,125 from April 17, 1936, on $5,800 from July 2, 1936, and on $250 from July 20, 1936; Anglo-Continentale Trust Maatschappij (Anglo-Continentale Trust Company), $9,775, with interest on $250 from February 26, 1935, on $8,275 from June 18, 1935, and on $1,250 from July 9, 1935; Mondiale Handels-Und Verwaltungs, A. G. $7,275, with interest on $2,700 from June 18, 1935, on $1,625 from April 1, 1936, and on $2,950 from July 9, 1936; Hydropress Handels, A. G., $250, with interest thereon from July 21, 1936; and as so modified affirmed, with costs and disbursements of the appeal to the defendant-appellant.

Enter.

F. M.

[fol. 158] In Supreme Court, Appellate Division, First Department, May, 1938

James O'Malley, Alfred H. Townley, Irwin Untermeyer, Albert Cohn, Joseph M. Callahan, JJ.

Anglo-Continentale Treuhand A. G., et al., Respondent

vs.

Bethlehem Steel Company, Appellant

Memorandum Decision

Order and judgment modified by reducing the recoveries of the respective plaintiffs to the following sums: Anglo-

Continentale Treuhand, A. G., $10,475; Anglo-Continentale Trust Maatschappij, $9,775; Mondiale Handels-Und Verwaltungs, A. G., $7,275; Hydropress Handels, A. G. $250; and as so modified affirmed. No opinion. (Untermyer and Callahan, JJ., dissenting and voting for affirmance.)

Settle order on notice.

[fol. 159] In Supreme Court of New York, Appellate Division, First Department

No. 538

[Title omitted]

Stipulation Concerning Any Claim of Disqualification of Mr. Justice Untermyer

It is hereby stipulated and agreed by and between the attorneys for the respective parties hereto that any claim of disqualification of Hon. Irwin Untermyer to take part, as a member of this Court, in the hearing and determination of the appeal argued before this Court on May 17, 1938, because of his ownership of shares of stock or other securities in any corporate litigant herein or for any other reason, be, and it hereby is, waived by the attorney for the plaintiffs-respondents and by the attorneys for the defendant-appellant pursuant to Chapter 404 of the Laws of New York of 1938; and that the oral stipulation to the same effect made in open court on May 17, 1938, be, and it hereby is, ratified and confirmed.

Dated, New York, N. Y., May 19, 1938.

Harry Hoffman, Attorney for Plaintiffs-Respondents.

Cravath, deGersdorff, Swaine & Wood, Attorneys for Defendant-Appellant.

[fol. 160] In Supreme Court of New York

Affidavit of No Opinion by Appellate Division

State of New York,
County of New York, ss:

Harry Hoffman, being duly sworn, deposes and says:

I am an attorney and counselor at law duly licensed to practice in all the courts of record of this State.

I am the attorney for the plaintiffs-appellants-respondents herein and am familiar with the proceedings had herein upon the appeal to the Appellate Division. No opinion other than the above memorandum decision was rendered by the majority of the Appellate Division in affirming the judgment herein; three Justices (O'Malley, Townley and Cohn, JJ.) voted for modification of the order and judgment of the court below by reducing the recoveries of the respective plaintiffs, and for affirmance of said order and judgment as so modified, and two Justices (Untermyer and Callahan, JJ.) dissented and voted for affirmance.

Harry Hoffman.

Sworn to before me this 7th day of October, 1938. John H. Kay, Notary Public. Nassau Co. No. 669. New York Co. Clk's No. 416. New York Co. Reg. 0K255. Commission Expires Mar. 30, 1940.

[fol. 161] IN COURT OF APPEALS OF NEW YORK

STIPULATION AS TO PAPERS OMITTED IN PRINTING

It is hereby stipulated and agreed by and between the attorneys for the respective parties hereto that the following papers need not be printed and may be omitted from the record on appeal to the Court of Appeals herein, and that copies of each of the same may be handed up to the Court of Appeals on the argument of this appeal and may be referred to in the briefs and arguments with the same force and effect as though formally included in the printed record on appeal:

(1) Exhibits A to L, inclusive, annexed to the affidavit of Arpad Plesch, sworn to May 17, 1937, in support of the motion for summary judgment, each of which is a photostatic copy of an exemplified certificate of protest, in the Dutch language (sworn English translations of Exhibits C, E, F, G and H are also annexed as part of said five Exhibits, respectively) for nonpayment of coupons presented at Hope Co., in Amsterdam, Holland, in each instance on behalf of one or another of the respective plaintiffs herein;

(2) So much of Exhibit B annexed to the affidavit of William J. Brown, sworn to May 22, 1937, in opposition to

the motion for summary judgment, as consists of a photostatic copy of a circular, in the Dutch language, issued by [fol. 162] Hope & Co. in Amsterdam, Holland, and dated May 17, 1912, in respect of the issuance of Bethlehem Steel Company First Lien and Refunding Mortgage Five Per Cent. Thirty-Year Gold Bonds; and

(3) Stipulation between the parties hereto, dated July 30, 1937, pursuant to which the plaintiffs have deposited their coupons (together with United States Treasury Department Ownership Certificates, Form 1001) with the Treasurer of Bethlehem Steel Corporation in New York, as recited in the order appealed from.

It is further stipulated and agreed by and between the attorneys for the respective parties hereto, that translations of two of the photostatic copies of the exemplified certificates of protest annexed, as Exhibits A to L, inclusive, to the affidavit of Arpad Plesch, sworn to May 17, 1937, in support of the motion for summary judgment, are generally in the forms annexed to the stipulation herein dated March 9, 1938 (a copy of which stipulation appears in the foregoing record on appeal at pages 130-132, fols. 388-396) as Schedule I and Schedule II thereof, which are hereby made a part hereof, with the blanks filled in as indicated by the words in brackets ([ ]) in said Schedule I and Schedule II (a copy of said Schedule I appears at pages 133-134, fols. 397-402, of the foregoing record on appeal, and a copy of said Schedule II appears at pages 135-136, fols. 403-408, of the foregoing record on appeal); that said certificates of protest recite the presentation at Hope & Company in Amsterdam, Holland, of coupons, in each instance on behalf of one or [fol. 163] another of the respective plaintiffs herein, of the various maturity dates and amounts and bearing the serial numbers as indicated in Schedule III, which is hereby made a part hereof, of said stipulation dated March 9, 1938 (a copy of said Schedule III appears at pages 137-143, fols. 409-429, of the foregoing record on appeal); that Schedule IV annexed to said stipulation of March 9, 1938 (a copy of which appears at page 144, fols. 430-432, of the foregoing record on appeal) is hereby made a part hereof and shows (1) the dates of the respective protests in behalf of the respective plaintiffs, (2) the face amount of the coupons as expressed in American dollars, (3) the face amount of the

coupons as expressed in guilders, being also in each instance the amount demanded by or in behalf of the respective plaintiffs, and (4) the dollar amount awarded on plaintiffs' motion, including in the amount so awarded the dollar value of the guilders involved in the protest fees; and that the aforesaid certificates of protest recite, in each instance, the presentation of said coupons, the demand for payment of said coupons in guilders on the dates and in the amounts, respectively, as indicated in said Schedule IV, and the payment of the protest fees in guilders in behalf of the various plaintiffs..

Dated, October 7, 1938.

Harry Hoffman, Attorney for Plaintiffs-Appellants-Respondents. Cravath, deGersdorff, Swaine & Wood, Attorneys for Defendant-Respondent-Appellant..

[fol. 164] STIPULATION WAIVING CERTIFICATION

It is hereby stipulated that the papers as hereinbefore printed consist of true and correct copies of the notices of appeal, the judgment and order appealed from and all the papers upon which the court below acted in making the judgment and order appealed from and the whole thereof now on file in the office of the Clerk of the County of New York.

Certification thereof in pursuance of Section 616 of the Civil Practice Act is hereby waived.

Dated, October 7, 1938.

Harry Hoffman, Attorney for Plaintiffs-Appellants-Respondents. Cravath, deGersdorff, Swaine & Wood, Attorneys for Defendant-Respondent-Appellant.

[fol. 165] IN COURT OF APPEALS OF NEW YORK

No. 430B Opinion

ANGLO-CONTINENTALE TREUHAND et al., Appellants-Respondents

vs.

BETHLEHEM STEEL COMPANY, Respondent-Appellant

OPINION

Per CURIAM:

This action is the same in principle as the Zurich Insurance Company case decided herewith. In the present litigation the trial justice granted plaintiff's motion for summary judgment for the amount demanded in the complaint but the Appellate Division modified by reducing the judgment to amounts to conform with the theory that the Joint Resolution of Congress required payment of these coupons in foreign currency in a foreign country based upon the value of United States dollars as depreciated. The judgment of the Appellate Division should be reversed and that of the Special Term affirmed with costs, &c.

[fol. 166] IN COURT OF APPEALS OF NEW YORK

STATE OF NEW YORK, ss:

Pleas in the Court of Appeals, held at Court of Appeals Hall, in the City of Albany, on the 11th day of January, in the year of our Lord one thousand nine hundred and thirty-nine, before the Judges of said Court.

Witness: The Hon. Frederick E. Crane, Chief Judge, Presiding. John Ludden, Clerk.

ANGLO-CONTINENTALE TREUHAND, A. G. &c., & Ors., Plaintiff-Appellant-Respondents,

against

BETHLEHEM STEEL COMPANY, Defendant-Respondent-Appellant

REMITTITUR—January 12, 1939

Be it Remembered, That on the 8th day of October in the year of our Lord one thousand nine hundred and thirty-

eight, Anglo-Continentale Treuhand, A. G. &c. & ors., the Plaintiff-Appellant-Respondents, in this cause, came here unto the Court of Appeals, by Harry Hoffman, their attor- [fol. 167] ney, and filed in the said Court a Notice of Appeal and return thereto from the order and judgment of the Appellate Division of the Supreme Court in and for the First Judicial Department. And Bethlehem Steel Company, the Defendant-Respondent-Appellant in said cause, afterwards appeared in said Court of Appeals by Cravath, de Gersdorff, Swaine & Wood, its attorneys, and also filed a Notice of Appeal.

Which said Notices of Appeal and the return thereto, filed as aforesaid, are hereunto annexed.

Whereupon, The said Court of Appeals having heard this cause argued by Mr. Harry Hoffman, of counsel for the plaintiff-appellant-respondents, and by Mr. Frederick H. Wood, of counsel for the defendant-respondent-appellant, and after due deliberation had thereon, did order and adjudge that the judgment of the Appellate Division of the Supreme Court appealed from herein be and the same hereby is reversed and that of Special Term affirmed with costs in this court and in the Appellate Division to the plaintiffs-appellants.

And it was also further ordered, that the record aforesaid, and the proceedings in this Court, be remitted to the said Supreme Court, there to be proceeded upon according to law.

Therefore, it is considered that the said judgment of Appellate Division be reversed and that of Special Term affirmed with costs in this court and in the Appellate Division to the plaintiffs-appellants, as aforesaid.

And hereupon, as well the Notices of Appeal and return thereto aforesaid as the judgment of the Court of Appeals [fol. 168] aforesaid, by it given in the premises, are by the said Court of Appeals remitted into the Supreme Court of the State of New York before the Justices thereof, according to the form of the statute in such case made and provided, to be enforced according to law, and which record now remains in the said Supreme Court, before the Justices thereof, &c.

John Ludden, Clerk of the Court of Appeals of the State of New York.

COURT OF APPEALS

Clerk's Office

Albany, January 12, 1939.

I hereby certify, that the preceding record contains a correct transcript of the proceedings in said cause in the Court of Appeals, with the papers originally filed therein, attached thereto.

John Ludden, Clerk. (Seal of State of New York, Court of Appeals.)

[fol. 169] IN SUPREME COURT OF NEW YORK, COUNTY OF NEW YORK

[Title omitted]

ORDER ON REMITTITUR—January 12, 1939

Plaintiffs having appealed to the Court of Appeals from so much of the judgment entered upon the decision of the Appellate Division of the Supreme Court, First Judicial Department, in the office of the Clerk of the County of New York on the 29th day of July, 1938, as modified and reduced the judgment of the Supreme Court, New York [fol. 170] County, entered in the office of the Clerk of the County of New York on the 30th day of October, 1937, in favor of plaintiff Anglo-Continentale Treuhand, A. G. and against the defendant Bethlehem Steel Company from the sum of $19,245.48 to the sum of $11,834.17, and as modified and reduced the judgment of the Supreme Court, New York County, in favor of the plaintiff N. V. Anglo-Continentale Trust Maatschappij (Anglo-Continental Trust Company) and against the defendant Bethlehem Steel Company from the sum of $18,898.70 to the sum of $11,600.67, and as modified and reduced the judgment of the Supreme Court, New York County, in favor of the plaintiff Mondiale Handels-Und Verwaltungs, A. G. and against the defendant Bethlehem Steel Company from the sum of $13,579.81 to the sum of $8,369.69; and as modified and reduced the judgment of the Supreme Court, New York County, in favor of the plaintiff Hydropress Handels, A. G. and against the defendant Bethlehem Steel Company from the sum of $465.85 to the sum of $280.37; and from so much of said judgment as awarded costs and disbursements to the de-

fendant and against the plaintiffs in the sum of $881.70; and plaintiffs also having appealed from the order of the Appellate Division of the Supreme Court, First Judicial Department, made on July 22, 1938, and entered in the office of the Clerk of the County of New York on July 27, 1938, upon which the aforesaid judgment of the Appellate Division was based; and plaintiffs also having appealed from each and every such part of said order entered July 27, 1938, and from each and every such part of said judgment entered July 29, 1938, as modified and reduced the [fol. 171] amount of recovery of the plaintiff Anglo-Continentale Treuhand, A. G. from the sum of $19,245.48 to the sum of $11,834.17, and as modified and reduced the amount of recovery of the plaintiff N. V. Anglo-Continentale Trust Maatschappij (Anglo-Continental Trust Company) from the sum of $18,898.70 to the sum of $11,600.67, and as modified and reduced the amount of recovery of the plaintiff Mondiale Handels-Und Verwaltungs, A. G. from the sum of $13,579.81 to the sum of $8,369.69, and as modified and reduced the amount of recovery of the plaintiff Hydropress Handels, A. G. from the sum of $465.85 to the sum of $280.37; and plaintiffs also having appealed from each and every part of said order entered July 27, 1938, and from each and every part of said judgment entered July 29, 1938, as awarded costs and disbursements to the defendant and against the plaintiffs in the sum of $881.70;

And defendant having appealed to the Court of Appeals from so much, and only such part, of the judgment of modification in the above-entitled action entered in the office of the Clerk of the County of New York on the 29th day of July, 1938, as adjudged that the judgment in the above-entitled action entered in the office of the Clerk of the County of New York on the 30th day of October, 1937, and the order in the above-entitled action entered in the office of the Clerk of the County of New York on the 26th day of October, 1937, be modified by reducing the amount of the recovery therein of plaintiff Anglo-Continentale Treuhand, A. G., of Liechtenstein, Europe, to an amount in excess of $10,475, by reducing the amount of the recovery therein of [fol. 172] plaintiff N. V. Anglo-Continentale Trust Maatschappij (Anglo-Continental Trust Company), of Rotterdam, The Netherlands, Europe, to an amount in excess of $9,775, by reducing the amount of the recovery therein of plaintiff Mondiale Handels-Und Verwaltungs, A. G., of

Liechtenstein, Europe, to an amount in excess of $7,275, and by reducing the amount of the recovery therein of plaintiff Hydropress Handels, A. G., of Liechtenstein, Europe, to an amount in excess of $250, which judgment of modification was entered upon an order of the Appellate Division of the Supreme Court, First Judicial Department, entered in the office of the Clerk of the County of New York on the 27th day of July, 1938; and defendant having appealed to the Court of Appeals from so much, and only such part, of said order of the Appellate Division of the Supreme Court, First Judicial Department, as ordered and adjudged that said judgment entered on the 30th day of October, 1937, and said order entered on the 26th day of October, 1937 (which are the judgment and order referred to in said order of the Appellate Division, First Judicial Department, as the judgment and order appealed from) be modified so as to award interest to plaintiff Anglo-Continentale Treuhand, A. G. on $4,425 from April 17, 1936, on $5,800 from July 2, 1936, on $250 from July 20, 1936, to plaintiff N. V. Anglo-Continentale Trust Maatschappij (Anglo-Continental Trust Company) on $250 from February 26, 1935, on $8,275 from June 18, 1935, and on $1,250 from July 9, 1935, to plaintiff Mondiale Handels-Und Verwaltungs, A. G. on $2,700 from June 18, 1935, on $1,625 from April 1, 1936, [fol. 173] and on $2,950 from July 9, 1936, and to plaintiff Hydropress Handels, A. G. on $250 from July 21, 1936;

And said appeal having been argued by Harry Hoffman, Esq., of counsel for plaintiffs, and Frederick H. Wood, Esq., of counsel for defendant, and due deliberation had thereon, and it having been ordered and adjudged by the Court of Appeals that the judgment of the Appellate Division of the Supreme Court, First Judicial Department, should be reversed and the judgment of the Special Term be affirmed, with costs to the plaintiffs in the Court of Appeals and in the Appellate Division, and it having been further ordered that the record and proceedings thereon be remitted to this Court, there to be proceeded upon according to law,

Now, on reading and filing the remittitur of the Court of Appeals dated January 12, 1939, it is, on motion of Harry Hoffman, Esq., attorney for the plaintiffs,

Ordered, that the order and judgment of the Court of Appeals be, and the same hereby are, made the order and judgment of this Court.

Enter.

A. J. L., J. S. C.

[fol. 174] In Supreme Court of New York, County of New York

Index No. 32424—1936

Anglo-Continentale Treuhand, A. G., a Liechtenstein Corporation, N. V. Anglo-Continentale Trust Maatschappij (Anglo-Continental Trust Company), a Netherlands Corporation, Mondiale Handels-und Verwaltungs, A. G., a Liechtenstein Corporation, and Hydropress Handels, A. G., a Liechtenstein Corporation, Plaintiffs,

against

Bethlehem Steel Company, Defendant

Judgment

A judgment having been entered herein in the office of the Clerk of the County of New York on the 30th day of October, 1937, in favor of the plaintiff Anglo-Continentale Treuhand, A. G., of Liechtenstein, Europe, against the defendant Bethlehem Steel Company, of 25 Broadway, New York, N. Y., in the sum of $19,245.48, and in favor of the plaintiff, N. V. Anglo-Continentale Trust Maatschappij (Anglo-Continental Trust Company), of Rotterdam, The Netherlands, Europe, against the said defendant in the sum of $18,898.70, and in favor of the plaintiff Mondiale Handels-Und Verwaltungs, A. G., of Liechtenstein, Europe, against the said defendant in the sum of $13,579.81, and in [fol. 175] favor of the plaintiff Hydropress Handels, A. G., of Liechtenstein, Europe, against the said defendant in the sum of $465.85, and in favor of all of said plaintiffs against the said defendant in the sum of $32.65, and the defendant having appealed to the Appellate Division of the Supreme Court, First Judicial Department, from the said judgment and from the order upon which said judgment is based, entered in the office of said Clerk on October 26, 1937, which order struck out the amended answer of the defendant and directed that judgment be entered in favor of the plaintiffs as aforesaid; and said Appellate Division on July 22, 1938, having made an order and judgment modifying said judgment and order appealed from, by reducing the amount of the recoveries of the respective plaintiffs and, as so modified, affirming said order and judgment, with costs and disbursements of the appeal to the defendant; and a judgment

having been entered in the office of said Clerk on July 29, 1938, upon said modification reducing the amount of the recoveries and awarding defendant the sum of $881.70 costs and disbursements against the plaintiffs; and the plaintiffs having appealed to the Court of Appeals from said judgment of modification and from the order of the Appellate Division dated July 22, 1938, upon which said judgment of modification is based; and the defendant having also appealed from the said order and judgment of modification; and said appeals having duly come on to be heard, and having been argued by Mr. Harry Hoffman, of counsel for the plaintiffs-appellants-respondents, and by Mr. Frederick H. Wood, of counsel for the defendant-respondent-appel-
[fol. 176] lant, and the Court of Appeals after due deliberation had thereon, having ordered and adjudged that the judgment of the Appellate Division of the Supreme Court appealed from be reversed and that of the Special Term affirmed, with costs in the Court of Appeals and in the Appellate Division to the plaintiffs-appellants, and that the record and proceedings thereon be remitted to this Court to be proceeded upon according to law, and the said record having been duly remitted to this Court and the remittitur of the Court of Appeals dated January 12, 1939, having been duly filed herein on January 12, 1939, and an order having been made and entered herein by this Court on January 12, 1939 making the said order and judgment of the Court of Appeals the order and judgment of this Court, and the costs having been duly taxed, it is, on motion of Harry Hoffman, attorney for the plaintiffs,

Adjudged, that the order and judgment of the Court of Appeals be, and the same hereby are, made the order and judgment of this Court; and it is

Further adjudged, that the judgment entered herein on the 29th day of July, 1938, be, and the same hereby is, reversed; and it is

Further adjudged, that the judgment entered herein in favor of the plaintiffs and against the defendant on the 30th day of October, 1937, be, and the same hereby is, affirmed, with costs in the Court of Appeals and in the Appellate Division to the plaintiffs to be taxed by the Clerk of this Court; and it is

[fol. 177] Further adjudged, that the plaintiffs, Anglo-Continentale Treuhand, A. G., of Liechtenstein, Europe, N. V. Anglo-Continentale Trust Maatschappij (Anglo-Con-

tinental Trust Company), of Rotterdam, The Netherlands, Europe, Mondiale Handels-Und Verwaltungs, A. G., of Liechtenstein, Europe, and Hydropress Handels, A. G., of Liechtenstein, Europe, recover of the defendant, Bethlehem Steel Company, of 25 Broadway, New York, N. Y., the sum of $781.75, the costs as taxed by the Clerk of this court, and have execution therefor.

Judgment signed and entered the 12th day of January, 1939.

Archibald R. Watson, Clerk. (Seal.)

[fol. 178] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 179] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed January 16, 1939

The petition herein for a writ of certiorari to the Supreme Court of the State of New York is granted, and the case is assigned for argument immediately following No. 590.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Endorsed on cover: File No. 43,076. New York Supreme Court. Term No. 591. Bethlehem Steel Company, petitioner, vs. Anglo-Continentale Treuhand, A. G., et al. Petition for a writ of certiorari and exhibit thereto. Filed January 13, 1939. Term No. 591, O. T., 1938.